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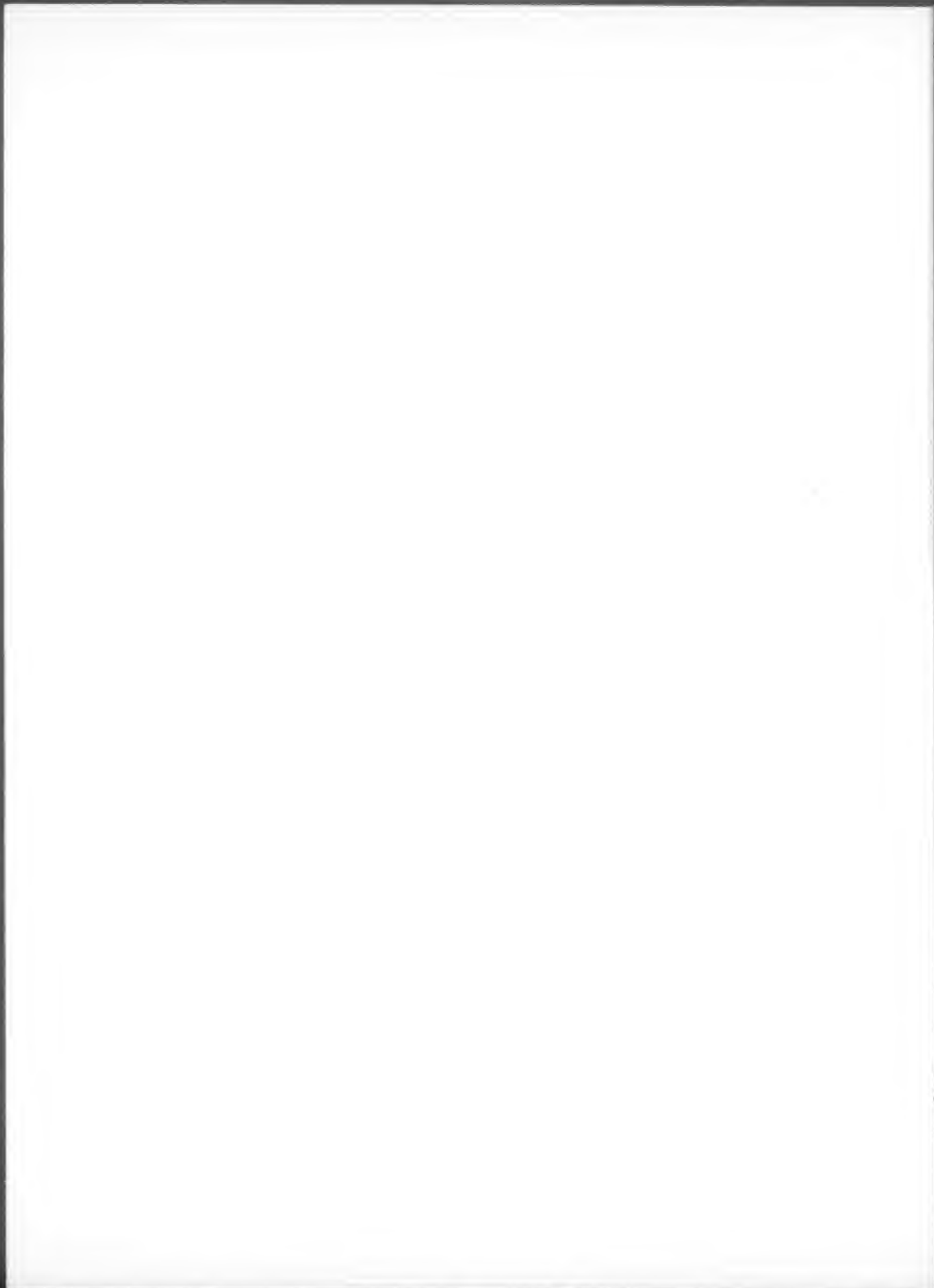
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Contents

Federal Register

Vol. 66, No. 194

Friday, October 5, 2001

Agricultural Marketing Service

NOTICES

Committees; establishment, renewal, termination, etc.:
Fruit and Vegetable Industry Advisory Committee, 51004

Agricultural Research Service

NOTICES

Patent licenses; non-exclusive, exclusive, or partially
exclusive:

Fiber-Gels Technologies, Inc., 51004
SunWest Foods, Inc., 51004-51005

Agriculture Department

See Agricultural Marketing Service

See Agricultural Research Service

Army Department

NOTICES

Meetings:

U.S. Military Academy, Board of Visitors, 51026

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

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

Broadcasting Board of Governors

NOTICES

Meetings; Sunshine Act, 51006

Centers for Disease Control and Prevention

NOTICES

Senior Executive Service:

Performance Review Board; membership [Editorial Note:
This document, which published in the October 3,
2001, *Federal Register* on page 50438, incorrectly
printed under Agency for Toxic Substances and
Disease Registry in that issue's Table of Contents.]

Agency information collection activities:

Submission for OMB review; comment request, 51047-
51049

Meetings:

ICD-9-CM Coordination and Maintenance Committee,
51049-51050

Mine Safety and Health Research Advisory Committee,
51050

Centers for Medicare & Medicaid Services

NOTICES

Medicare:

Hospice wage index; correction, 51095

Commerce Department

See International Trade Administration

See National Oceanic and Atmospheric Administration

See National Telecommunications and Information
Administration

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 51006-
51007

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES

Procurement list; additions and deletions, 51005-51006

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles:

Bangladesh, 51024

Special access and special regime programs:

Participation denial—

Isfel Co., 51024

Textile and apparel categories:

North American Free Trade Agreement—

Nylon yarns; short supply petition; comment request,
51024-51025

Commodity Futures Trading Commission

NOTICES

Agency information collection activities:

Proposed collection; comment request, 51025-51026

Defense Department

See Army Department

Education Department

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 51026-
51027

Employment and Training Administration

RULES

Aliens:

Labor certification and petition process for temporary
employment of nonimmigrant aliens in U.S.
agriculture; Labor Department adjudication authority
Effective date deferred; correction, 51095

Employment Standards Administration

NOTICES

Minimum wages for Federal and federally-assisted
construction; general wage determination decisions,
51072-51073

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Radioactive waste:

Yucca Mountain, NV—

Site recommendation consideration; hearings, etc.,
51027

Environmental Protection Agency

RULES

Air quality implementation plans; approval and
promulgation; various States:

Pennsylvania; republication, 50829

Hazardous waste program authorizations:

Idaho, 50833

Pesticides; tolerances in food, animal feeds, and raw
agricultural commodities:

Fenthion, etc., 50829-50833

PROPOSED RULES

- Air pollution control; new motor vehicles and engines:
 Nonroad large spark ignition engines and recreational engines (marine and land-based); emissions control, 51097-51272
- Air programs:
 Transportation conformity rule; grace period addition, etc., 50954-50961
- Hazardous waste:
 State underground storage tank program approvals—Hawaii, 50963-50966
- Water supply:
 National primary drinking water regulations—Arsenic; compliance and new source contaminants monitoring; clarifications, 50961-50963

NOTICES

- Agency information collection activities:
 Submission for OMB review; comment request, 51031-51036
 25011
- Environmental statements; availability, etc.:
 Agency statements—
 Comment availability, 51036-51037
 Weekly receipts, 51036
- Grants and cooperative agreements; availability, etc.:
 National Brownfields Assessment Demonstration Pilots, 51037-51040
- Meetings:
 FIFRA Scientific Advisory Panel, 51040
- Reports and guidance documents; availability, etc.:
 Pesticide registrants; guidance on submitting requests for threshold of regulation decisions, etc., 51040-51042
- Toxic and hazardous substances control:
 Interagency Testing Committee report—
 Receipt and comment request, 51275-51284
- Lead based paint in target housing and child occupied facilities; State and Indian tribe authorization applications—
 Tennessee, 51042-51044

Executive Office of the President

See Presidential Documents

Federal Aviation Administration**RULES**

- Airworthiness standards:
 Special conditions—
 Ayres Corp. Model LM 200 airplane, 50809-50819
 Byerly Aviation, Inc. Twin Commander model series 690/695 airplanes, 50819-50821
- Standard instrument approach procedures, 50821-50824

PROPOSED RULES**Airworthiness directives:**

- British Aerospace, 50894-50897
 CFM International, 50910-50912
 General Electric Co., 50891-50894, 50906-50910, 50912-50915
 McDonnell Douglas, 50870-50888, 50897-50906, 50915-50919
 Pratt & Whitney, 50888-50891

NOTICES

- Reports and guidance documents; availability, etc.:
 Transport category airships; airworthiness criteria, 51090-51092

Federal Bureau of Investigation**NOTICES**

- Agency information collection activities:
 Proposed collection; comment request, 51071

Federal Communications Commission**RULES****Common carrier services:****Personal communications services—**

Communications Assistance for Law Enforcement Act; implementation, 50841-50843

Frequency allocations and radio treaty matters:

Software defined radios, 50834-50841

Organization, functions, and authority delegations:

Contract Appeals Board; change, 50833-50834

Radio stations; table of assignments:

North Carolina, 50843

PROPOSED RULES**Television broadcasting:**

Cross-ownership of broadcast stations and newspapers, 50991-51000

NOTICES**Agency information collection activities:**

Proposed collection; comment request, 51044-51046

Meetings:

Technological Advisory Council, 51046-51047

Federal Energy Regulatory Commission**PROPOSED RULES****Practice and procedure:**

Natural gas pipelines and transmitting public utilities (transmission providers); standards of conduct, 50919-50929

NOTICES**Electric rate and corporate regulation filings:**

Wellhead Power Gates, LLC, et al., 51027-51029

Hydroelectric applications, 51029-51030**Meetings:**

Energy infrastructure issues; conference, 51030

Regional Transmission Organizations—

Electricity market design and structure, 51030

National Register of Historic Places:

Programmatic agreement for managing properties; restricted service list—

Great Northern Paper, Inc., 51030-51031

Federal Reserve System**NOTICES****Banks and bank holding companies:**

Change in bank control, 51047

Fish and Wildlife Service**RULES****Marine mammals:**

Polar bear trophies; importation from Canada; change in finding for M'Clintock Channel population, 50843-50851

NOTICES**Environmental statements; availability, etc.:**

Overabundant light goose population; management alternatives, 51273-51274

Food and Drug Administration**RULES****Food for human consumption:****Food labeling—**

Plant sterol/sterol esters and coronary heart disease, 50824-50826

PROPOSED RULES**Animal drugs, feeds, and related products:**

Ruminant feed; animal proteins prohibited; public hearing, 50929-50931

NOTICES

- Agency information collection activities:
Proposed collection; comment request, 51050-51052
- Meetings:
Anti-Infective Drugs Advisory Committee, 51052
Pharmaceutical Science Advisory Committee, 51052-51053
- Reports and guidance documents; availability, etc.:
Cancer drugs and biological products; clinical data in marketing applications, 51053
Geriatric labeling; content and format, 51053-51054

General Services Administration**RULES**

- Federal Management Regulation:
Personal property replacement pursuant to exchange/sale authority
Correction, 51095

Health and Human Services Department

- See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

PROPOSED RULES

- Energy Employees Occupational Illness Compensation Program Act; implementation:
Probable cause determination guidelines, 50967-50978
Radiation dose reconstruction methods, 50978-50991

NOTICES

- Organization, functions, and authority delegations:
Centers for Disease Control, Director, 51047

Housing and Urban Development Department**NOTICES**

- Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 51056

Indian Affairs Bureau**NOTICES**

- Environmental statements; availability, etc.:
Riverside County, CA; Teayawa Energy Center, 51056-51057

Interior Department

- See Fish and Wildlife Service
See Indian Affairs Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service**NOTICES**

- Meetings:
Citizen Advocacy Panels—
Midwest District, 51094

International Trade Administration**NOTICES**

- Antidumping:
Clad steel plate from—
Japan, 51007-51008
Frozen concentrated orange juice from—
Brazil, 51008-51010
Greenhouse tomatoes from—
Canada, 51010-51015

Pasta from—

- Italy and Turkey, 51015-51017
Stainless steel butt-weld pipe fittings from—
Korea, 51017-51018
Cheese quota; foreign government subsidies:
Quarterly update, 51018-51019
Countervailing duties:
Pasta from—
Turkey, 51019-51020
Export trade certificates of review, 51020-51021

International Trade Commission**NOTICES**

- Import investigations:
Cold-rolled steel products from—
Various countries, 51069-51070
Sulfanilic acid from—
Hungary and Portugal, 51070-51071
Meetings; Sunshine Act, 51071

Justice Department

- See Federal Bureau of Investigation

PROPOSED RULES

- Federal Bureau of Investigation; Communications Assistance for Law Enforcement Act; implementation:
"Replaced" and "significantly upgraded or otherwise undergoes major modification;" definitions, etc., 50931-50952

Labor Department

- See Employment and Training Administration
See Employment Standards Administration

NOTICES

- Agency information collection activities:
Submission for OMB review; comment request, 51071-51072

Maritime Administration**NOTICES**

- Meetings:
Voluntary Intermodal Sealift Agreement/Joint Planning Advisory Group
Synopsis, 51092-51093

Minerals Management Service**RULES**

- Royalty management:
Solid minerals reporting requirements
Correction, 50827

NOTICES

- Environmental statements; availability, etc.:
Gulf of Mexico OCS—
Oil and gas lease operations, 51057-51059

National Highway Traffic Safety Administration**NOTICES**

- Agency information collection activities:
Proposed collection; comment request, 51093

National Oceanic and Atmospheric Administration**RULES**

- Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 50858-50859
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish, 50851-50858

PROPOSED RULES

Fishery conservation and management:
 Alaska; fisheries of Exclusive Economic Zone—
 Salmon, 51001–51003
 Northeastern United States fisheries—
 Northeast multispecies, 51000–51001

Oil Pollution Act:
 Natural resource damage assessments, 50919

NOTICES

Agency information collection activities:
 Proposed collection; comment request, 51021–51022

Meetings:
 Gulf of Mexico Fishery Management Council, 51022

Permits
 Endangered and threatened species, 51023

National Park Service**NOTICES**

Meetings:
 Native American Graves Protection and Repatriation
 Review Committee, 51059
 Native American human remains and associated funerary
 objects:
 Maxwell Museum of Anthropology, University of New
 Mexico, NM—
 Na' at' oye Jish ceremonial bundle (Navajo), 51067
 Peabody Museum of Archaeology and Ethnology,
 Harvard University, MA—
 Inventory from Bayou Sel site, Clark County, AR,
 51059–51060
 Peabody Museum of Archaeology and Ethnology, Harvard
 University, NY—
 Brass finger ring from Ontario County, NY, 51066–
 51067
 Inventory from various locations in Broome County,
 NY, 51065–51066
 Inventory from various sites in New York, 51060–
 51065
 Thomas Burke Memorial Washington State Museum,
 University of Washington, WA—
 Quinault bird rattles, etc., from Washington World's
 Fair Commission, 51067–51069

National Science Foundation**NOTICES**

Committees; establishment, renewal, termination, etc.:
 DOE/NSF Nuclear Science Advisory Committee, 51073–
 51074

Meetings:
 Engineering Advisory Committee, 51074
 Equal Opportunities in Science and Engineering Advisory
 Committee, 51074
 Geosciences Advisory Committee, 51074

**National Telecommunications and Information
Administration****NOTICES**

Senior Executive Service:
 Performance Review Board; membership, 51023

Nuclear Regulatory Commission**PROPOSED RULES**

Federal claims collection, 50860–50870

NOTICES

Applications, hearings, determinations, etc.:
 Exelon Generation Co. LLC, 51075

Presidential Documents**EXECUTIVE ORDERS**

Committee; establishment, renewal, termination, etc.:
 Special Education, President's Commission on
 Excellence; establishment (EO 13227), 51285–51289

Public Health Service

See Centers for Disease Control and Prevention
 See Food and Drug Administration
 See Substance Abuse and Mental Health Services
 - Administration

Securities and Exchange Commission**NOTICES**

Investment Company Act of 1940:
 Temporary exemptions due to terrorist attacks;
 correction, 51096
 Meetings; Sunshine Act, 51075–51076
 Securities Exchange Act:
 Exemptive relief to respond to market developments,
 51076–51077
 Government securities reconciliations, 51077
 Securities Exchange Act; emergency orders:
 American Stock Exchange LLC; temporary response
 action; correction, 51095
 Market developments; temporary response action;
 correction, 51095–51096
 Self-regulatory organizations; proposed rule changes:
 American Stock Exchange LLC, 51077–51080
 Chicago Board Options Exchange, Inc., 51080–51081
 Depository Trust Co., 51081–51083
 New York Stock Exchange, Inc., 51083–51084
 Philadelphia Stock Exchange, Inc., 51084–51087

Social Security Administration**NOTICES**

Meetings:
 President's Commission to Strengthen Social Security,
 51087
 Privacy Act:
 Computer matching programs, 51087–51088

Special Counsel Office**NOTICES**

Privacy Act:
 Systems of records; correction, 51095

State Department**NOTICES**

Foreign terrorist organizations; designation:
 Abu Nidal Organization et al., 51088–51090

**Substance Abuse and Mental Health Services
Administration****NOTICES**

Federal agency urine drug testing; certified laboratories
 meeting minimum standards, list, 51054–51056

Surface Mining Reclamation and Enforcement Office**RULES**

Permanent program and abandoned mine land reclamation
 plan submissions:
 Maryland, 50827–50829

PROPOSED RULES

Permanent program and abandoned mine land reclamation
 plan submissions:
 Arkansas, 50952–50954

Surface Transportation Board

NOTICES

Railroad operation, acquisition, construction, etc.:
Canadian Pacific Railway Co. et al., 51093-51094

Tennessee Valley Authority

NOTICES

Meetings:

Regional Resource Stewardship Council, 51090

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile
Agreements

Transportation Department

See Federal Aviation Administration

See Maritime Administration

See National Highway Traffic Safety Administration

See Surface Transportation Board

Treasury Department

See Internal Revenue Service

Separate Parts in This Issue**Part II**

Environmental Protection Agency, 51097-51272

Part III

Department of Interior, Fish and Wildlife Service, 51273-
51274

Part IV

Environmental Protection Agency, 51275-51284

Part V

The President, 51285-51289

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR	1.....50834
Executive Orders:	2.....50834
13227.....51287	22.....50841
10 CFR	24.....50841
Proposed Rules:	64.....50841
15.....50860	73.....50843
14 CFR	Proposed Rules:
23 (2 documents).....50809,	73.....50991
50819	50 CFR
97 (2 documents).....50821,	18.....50843
50823	600.....50851
Proposed Rules:	660.....50851
39 (21 documents).....50870,	679.....50858
50872, 50873, 50875, 50877,	Proposed Rules:
50880, 50882, 50884, 50886,	648.....51000
50888, 50891, 50894, 50897,	679.....51001
50899, 50901, 50903, 50906,	
50910, 50912, 50915, 50917	
15 CFR	
Proposed Rules:	
990.....50919	
18 CFR	
Proposed Rules:	
37.....50919	
161.....50919	
250.....50919	
284.....50919	
358.....50919	
20 CFR	
655.....51095	
21 CFR	
101.....50824	
Proposed Rules:	
589.....50929	
28 CFR	
Proposed Rules:	
100.....50931	
30 CFR	
210.....50827	
218.....50827	
920.....50827	
Proposed Rules:	
904.....50952	
40 CFR	
52.....50829	
180.....50829	
271.....50833	
Proposed Rules:	
89.....51098	
90.....51098	
91.....51098	
93.....50954	
94.....51098	
141.....50961	
142.....50961	
281.....50963	
1048.....51098	
1051.....51098	
1065.....51098	
1068.....51098	
41 CFR	
101-46.....51095	
102-39.....51095	
42 CFR	
Proposed Rules:	
81.....50967	
82.....50978	
47 CFR	
0.....50833	

Rules and Regulations

Federal Register

Vol. 66, No. 194

Friday, October 5, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE162; Special Conditions No. 23-110-SC]

Special Conditions: Ayres Corporation Model LM 200, "Loadmaster" Propulsion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Ayres Corporation Model LM 200 airplane. This airplane will have a novel or unusual design feature(s) associated with a 14 CFR part 23 commuter category airplane which incorporates a propulsion system that consists of a twin engine powerplant that drives a single propeller through a combining gearbox. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: November 5, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Hancock, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE-112, 901 Locust, Room 301, Kansas City, Missouri 64106; 816-329-4143, fax 816-329-4090.

SUPPLEMENTARY INFORMATION:

Background

On April 16, 1996, Ayres Corporation applied for a type certificate for their new Model LM 200 and reapplied in May 1997 adding passenger and combi configurations. The Model LM 200 airplane will have a 19,000 pound

maximum takeoff weight with a payload capacity of about 7,500 pounds. The propulsion system will consist of a Light Helicopter Turbine Engine Company (LHTEC) CTP800-4T powerplant driving a single Hamilton Standard Model 568F-11, 12.9-foot diameter, propeller. The powerplant consists of two LHTEC CTS800 derivative turboprop engines plus a combining gearbox. The powerplant will be certified to 14 CFR part 33 and identified as a twin power section turboprop assembly. The two turboprop engines will be certified as part of the twin power section turboprop assembly (powerplant) and will not have separate individual type certificates. The airplane will be of conventional, semi-monocoque, aluminum construction with a high cantilever wing, fixed gear, mechanical and electro-mechanical controls and will be unpressurized. Certification will include flight into known icing and single pilot, IFR operations. Three interior configurations have been proposed: a cargo configuration (bulk or containerized cargo), a nine-passenger configuration, and "combi" (combination of up to nine passengers and cargo).

Type Certification Basis

Under the provisions of 14 CFR 17, Ayres Corporation must show that the Model LM 200 meets the applicable provisions of part 23 as amended by Amendments 23-1 through Amendment 53, effective April 30, 1998.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Model LM 200 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model LM 200 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 23 noise certification requirements of 14 CFR part 36. Also, the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92-574, the "Noise Control Act of 1972."

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The following definitions will apply to the Ayres Model LM 200 airplane design:

Powerplant—The Light Helicopter Turbine Engine Company (LHTEC) Model CTP800-4T powerplant, consists of two CTS800 derivative turboprop engines, a GKN Westland combining gearbox (CGB), and the engine assembly support structure. The powerplant is capable of providing 2,700 shp combined output power at takeoff and 1,350 shp with one engine inoperative. The CTP800-4T powerplant will obtain a part 33 type certificate identifying the powerplant as a "twin power section turboprop assembly."

Engine—An LHTEC CTS800 derivative, non-regenerative, front drive, free turbine power section, which includes compressor, combustor, turbine and accessories group. Each engine of the CTP800-4T is separately controlled by a fully redundant full authority digital electronic control (FADEC). The two engines will only be certified as part of the CTP800-4T powerplant. The CTP800-4T type certificate data sheet will include ratings and limitations for each engine in addition to that of the powerplant.

Engine Assembly Support Structure—The supporting structure that connects the two engines to the CGB. This structure will be type certificated as part of the CTP800-4T powerplant under part 33.

Propulsion System Unit (PSU)—The Model LM 200 airplane PSU consists of the powerplant plus the airframe mounted non-integrated lubrication system components, which include the CGB oil tank and CGB/engine oil cooler, as well as a single Hamilton Sundstrand Model 568F-11 propeller system.

Combining Gearbox (CGB)—All components necessary to transmit power from the two engines to the propeller. This includes couplings, supporting bearings for shafts, brake assemblies, clutches, gearboxes, transmissions, any attached accessory

pads or drives, and any cooling fans that are attached to, or mounted on, the CGB. The CGB will be type certificated as part of the CTP800-4T powerplant under part 33.

Multi-Engine—For the Model LM 200 and its powerplant configuration, “multi-engine” refers to the twin engine capability and ratings of the CTP800-4T powerplant in regard to type certification in the commuter category and flight operation.

One Engine Inoperative (OEI)—For the LM 200 airplane, “one engine inoperative” refers to a condition in which one engine of the CTP800-4T powerplant is not operational and the operation of the propeller is unchanged.

Part 23 does not contain adequate or appropriate requirements for the Ayres Model LM 200 powerplant installation of twin engines driving a single propeller through a combining gearbox. Issues include preventing unbalance damage to either the engines or the powerplant mounting system, or both, resulting from any engine or propeller single failure or probable combination of failures and the capability to continue safe flight to a landing. The propeller and other non-redundant components must be of sufficient durability to minimize any possibility of a failure that could have catastrophic implications to either the airplane or its propulsion system, or both.

Elements of these proposed special conditions have been developed to supplement part 23 standards that are considered inadequate to address the Model LM 200 airplane design, namely §§ 23.53, 23.67, 23.69, 23.75, 23.77, 23.903, 23.1191, 23.1305, 23.1583, 23.1585 and 23.1587.

Special conditions addressing the engine isolation requirements of § 23.903 were not included as the current rule is considered adequate. However, since the design of the multi-engine, single propeller Model LM 200 airplane will be significantly affected by this rule, the following comments are provided. Section 23.903(c) states, “The powerplants must be arranged and isolated from each other to allow operation, in at least one configuration, so that the failure or malfunction of any engine, or the failure or malfunction (including destruction by fire in the engine compartment) of any system that can affect an engine (other than a fuel tank if only one fuel tank is installed), will not: (1) prevent the continued safe operation of the remaining engines; or (2) require immediate action by any crew member for continued safe operation of the remaining engines.” This is a fail-safe requirement in that it takes advantage of the redundancy

provided by having multiple engines that are physically separated from each other, which is intended to ensure that no single failure affecting one engine will result in the loss of the airplane (also reference § 23.903(b)(1)). In conventional twin turboprop airplanes, this isolation is, in part, provided by the inherent separation of having each engine mounted on opposite sides of the airplane driving its own propeller. Installation of the engines on either side of the airplane automatically provides a degree of separation of critical systems, such as the electrical and fuel systems, and minimizes the effect of high vibration, rotor burst failures, and engine case burn-through from the opposite engine. This separation aids in preventing any single failure from jeopardizing continued safe operation of the airplane. In contrast, the nearness of the engines to each other driving a combining gearbox with a single propeller in the Model LM 200 airplane arrangement is inherently less isolated from certain types of failure modes. As a result, many failure modes that do not pose a significant hazard on conventional multi-engine airplanes could threaten continued safe operation of the Model LM 200 airplane unless specific additional precautions are taken to prevent hazardous secondary effects.

The FAA has reviewed the part 23 standards and identified that §§ 23.53(c), 23.67(c), 23.69, 23.75, and 23.77 are inadequate to address the effects of propeller control system failure modes in a manner consistent with how these sections address specific engine failure conditions. Sections 23.1191(a) and 23.1191(b) do not adequately define the locations of firewalls needed to isolate the engines and CGB of the PSU. Additionally, the FAA has identified that § 23.1305(c) is inadequate because it does not recognize the uniqueness of the Model LM 200 PSU. Furthermore, the FAA has identified that §§ 23.1583(b), 23.1585(c), and 23.1587(a) do not recognize a propeller system installation independent from either engine. Elements of these special conditions have been developed to ensure that these unique aspects of the Model LM 200 airplane are addressed in a manner equivalent to that established by part 23 standards. The FAA’s analysis and derivation of each of the special condition requirements is discussed in the “Description of Requirements” section below.

Description of Requirements

The Model LM 200 will incorporate the following novel or unusual design features:

(a) PSU Reliability

In order to define special conditions with the goal of establishing a safety level acceptable for certification as a limited commuter category airplane, the unique configuration of the Model LM 200 single propeller, twin engine design must be addressed. The Model LM 200 PSU design has eliminated as many single point failures as feasible for this type of configuration; however, certification criteria for the remaining single point failures unique to this configuration must be considered. A System Safety Analysis of the PSU is proposed that will identify and classify all possible failures that could be hazardous or catastrophic to the Model LM 200. The System Safety Analysis will consider such factors as non-redundancy, quality of manufacture and maintenance for continued airworthiness, as well as anticipated human errors, and it will highlight critical procedures that should be considered as required inspection items. Parts identified in the PSU System Safety Analysis whose failure results in a hazardous or catastrophic event will require control via a Critical Parts Plan. Furthermore, critical failure modes that could result in hazardous or catastrophic events should be addressed with appropriate design features to mitigate the potential results of such events.

The critical parts plan should be modeled after plans required by 14 CFR part 29, § 29.602, and related advisory material in Advisory Circular 29-2C for critical rotorcraft components. In addition, best industry practices shall be utilized in the definition and implementation of these critical parts. This plan will draw the attention of the personnel involved in the design, manufacture, maintenance, and overhaul of a critical part to the special nature of the part. The plan should define the details of relevant special instructions to be included in the Instructions for Continued Airworthiness. The Instructions for Continued Airworthiness, required by § 23.1529, should contain appropriate life limits, mandatory overhaul intervals, enhanced inspection limits, periodic ultrasonic (or equivalent) inspections, enhanced annual inspections, and conservative damage limits for return to service and repair for the critical parts identified in accordance with these proposed special conditions.

A means of annunciating hazardous and catastrophic failures to the cockpit should be provided if they are not immediately-identifiable to the flight

crew. Appropriate inspection intervals must be proposed to address any possible latent failures, which may go undetected.

For those failure modes unique to the non-conventional Model LM 200 design that have a fail-safe designed backup, either an acceptable test or analysis, or both, must address worst case conditions to substantiate the design. Methods to periodically check the backup system shall also be provided, as appropriate. In addition, a means of annunciating failure of the primary to the cockpit should be provided if it is not immediately identifiable to the flight crew. Appropriate inspection intervals must be proposed to address any possible latent failures, which may go undetected.

(b) Powerplant Requirements

Although rare, high-energy rotor unbalances due to high energy rotating machinery failures, such as a rim separation, can occur in-flight. They are typically followed quickly by either an in-flight shutdown or a pilot-commanded engine shutdown. The proposed special conditions address this short duration following a rotor failure by requiring that any high-energy vibration not affect the airworthiness of the operating engine. These vibrations could otherwise affect the operating engine in areas such as rotation (rubs), compressor surge or stall, damage to engine controls, accessories, mechanical, lubrication, fuel systems, and possible engine misalignment with respect to the gearbox. The magnitudes, frequency, and duration of such a vibration should be included in the powerplant installation manual. In addition, the vibration should not affect the structural integrity of the mounting system of either engine or the combining gearbox.

The CGB includes all parts necessary to transmit power from the engines to the propeller shaft. This includes couplings, supporting bearings for shafts, brake assemblies, clutches, gearboxes, transmissions, any attached accessory pads or drives, and any cooling fans that are attached to, or mounted on, the gearbox. The CGB for this multi-engine installation must be designed with a "continue to run" philosophy. This means that it must be able to power the propeller after failure of one engine or failure in one side of the CGB drive system, including any gear, bearing, or element expected to fail. Common failures, such as oil pressure loss or gear tooth failure, in the CGB must not compromise power output from the propulsion system.

Current engine certification regulations do not adequately address the requirements of a single combining gearbox; therefore, in addition to the engine requirements of § 23.903, the CGB will be required to complete a 200 hour endurance test that is patterned after the rotor drive system requirements of § 29.923. The endurance test is intended to exercise integration of the engines, combining gearbox, and loading characteristics of the intended propeller. Additional testing patterned after § 29.927 will address the torque and speed limits. The CGB design should contain features that include automatic disengagement of any failed engine (reference § 29.917(c)(3)), independent lubrication systems (reference § 29.1027), indicators to alert the pilot of lubrication system failure, and the capability to continue safe flight to a landing for a minimum of one-hour following pilot notification of CGB primary lubrication system failure.

The requirement for continued safe flight to a landing for a minimum of one-hour following pilot notification of CGB primary lubrication system failure stems from similarities between the Model LM 200 propulsion system and that of a typical multi-engine rotorcraft. Transport category A rotorcraft must be capable of sustaining flight for 30-minutes after the crew is notified of a drive system lubrication system failure or loss of lubricant, § 29.927(c). A rotorcraft may autorotate to a small landing area and, therefore, may find a safe landing area much sooner than a 19,000 pound airplane. For this reason, the FAA is similarly proposing that the Model LM 200 demonstrate its ability to sustain flight for one-hour, in accordance with AFM instructions for an emergency landing, after crew notification of a CGB primary lubrication system failure.

The critical parts of the CGB must also undergo a fatigue evaluation patterned after the structural requirements of § 29.571 for transport rotorcraft.

The Initial Maintenance Interval will be established during the powerplant certification testing, per § 33.90.

A rotor disc fragment should not be allowed to compromise the structural integrity of the powerplant or engine mounts. Loss of the structural integrity of the powerplant mount would be considered catastrophic for the Model LM 200 design. The powerplant and engine mount principal structural elements should be fail-safe if they could be severed during an uncontained engine failure. All other principal structural elements of the powerplant

and engine mounting system should be either fail-safe or damage tolerant.

(c) Propeller Installation

With a multi-engine, single propeller installation, the non-redundancy of the propeller system components from the propeller shaft forward becomes quite significant. In the case of the Model LM 200, Ayres Corporation must design against the possibility of a propeller-related failure that could result in catastrophic loss of the airplane. To accomplish this task, Ayres Corporation must substantiate the structural integrity of their design and must establish a critical parts program and a continued airworthiness maintenance and inspection program that ensures that the propeller is maintained in an acceptable manner.

The Model LM 200 airplane's single propeller system must be installed and maintained in such a manner as to substantially reduce or eliminate the occurrence of failures that would preclude continued safe flight and landing. To ensure the propeller installation, production, and maintenance programs are sufficient to achieve a high level of reliability, these proposed special conditions include a 2,500 cycle validation test based on enhanced requirements of § 35.41(c). The 2,500 cycles correspond to the FAA's estimated annual usage for a turboprop airplane in commercial service. An airplane cycle includes idle, takeoff, climb, cruise, and descent. The test must utilize production parts installed on the powerplant and should include a wide range of ambient and wind conditions, several full stops, and validation of scheduled and unscheduled maintenance practices. The purpose of this test is to evaluate the system for service wear conditions and start/stop cycles. It is not intended to test the propeller vibratory loads. This evaluation may be accomplished on the airplane in a combination of ground and flight cycles or on a ground test facility. If the testing is accomplished on a ground test facility, the test configuration must include the PSU and all sufficient airframe interfacing system hardware to simulate the actual airplane installation and operation.

On a conventional multi-engine airplane, the flight crew will secure an engine and feather the propeller to minimize effects of propeller imbalance. Propeller imbalance could be caused by blade failures or by propeller system failures such as loss of a de-icing boot, malfunction of a de-icing boot in icing conditions, an oil leak into a blade butt, asymmetric blade pitch, or a failure in

a counterweight attachment. The Model LM 200 airplane design does not provide any means to reduce the vibration produced by an unbalanced propeller. Therefore, these proposed special conditions require that the engines, CGB, powerplant and engine mounting system, primary airframe structure, and critical systems be designed to function safely in the high vibration environment generated by these less severe propeller failures. Ayres Corporation must specify the maximum allowable propeller unbalance. This is the maximum unbalance that will not cause damage to the engines, powerplant and engine mounting system, CGB, primary airframe structure, or to any other critical equipment that would jeopardize the continued safe flight and landing of the airplane. The vibration level caused by this unbalance must not jeopardize the flight crew's ability to continue to operate the airplane in a safe manner. Any part (or parts) whose failure (or probable combination of failures) would result in a propeller unbalance greater than the defined maximum would also be classified as a critical part.

It should be shown by a combination of tests and analyses that the airplane is capable of continued safe flight and landing with the maximum propeller unbalance, which includes collateral damage caused by the unbalance event.

During continued operation for one hour with the declared maximum unbalance, the evaluation should show that the induced vibrations will not cause damage either to the primary structure of the airplane or to critical equipment that would jeopardize continued safe flight and landing. The degree of flight deck vibration should not prevent the flight crew from operating the airplane in a safe manner. This includes the ability to read and accomplish checklist procedures. This evaluation should consider the effects on continued safe flight and landing from the possible damage to primary structure, which includes but is not limited to engine mounts, inlets, nacelles, wing, and flight control surfaces. Consideration should also be given to the effects of vibratory loads on critical equipment (including connectors) mounted on the engine or airframe.

In the unique design of the Model LM 200 CGB, the FAA understands that reverse rotation of the propeller on the ground would engage the sprag clutch. In turn, this would drive both engines without lubrication of the engine bearings or gearbox and cause possible damage to those elements; therefore, a

means must be provided to prevent any adverse effects resulting from propeller "wind-milling" on the ground.

The Hamilton Sundstrand Model 586F-11 propeller meets special conditions imposed during the propeller type certification program (Docket Nos. 94-ANE-60 and 94-ANE-61). The propeller special conditions addressed electronic propeller and pitch control systems, a four-pound bird strike, lightning strike and fatigue. If the propeller had not been required to meet those conditions during its type certification program, the FAA would have required similar measures in these Model LM 200 special conditions since the propeller is an especially critical component on this airplane. To meet the airplane requirements for the Model LM 200, the Instructions for Continued Airworthiness may need to be modified.

(d) Propeller Control System

For this propeller control system, no probable multiple failures were identified that create a hazardous condition; therefore, these special conditions were written to consider single point failures in the primary propeller control system only.

These proposed special conditions require the propeller control system to be independent of the engines such that a failure of any engine or the engine's control system will not result in failure or inability to control the propeller.

Ayres Corporation plans to address these special conditions by providing a mechanical high pitch stop, which would be set to a "get home" pitch position, thereby preventing the propeller blades from rotating to a feather pitch position when oil pressure is lost in the propeller control system. This would allow the propeller to continue to produce a sufficient level of thrust as a fixed pitch propeller.

In the event the propeller undergoes an uncommanded pitch change, these proposed special conditions require that the Model LM 200 airplane not be placed in an unsafe condition. They also require that an indication of the failure be provided to the flight crew.

(e) PSU Instrumentation

On a conventional multi-engine airplane, the pilot has positive indication of an inoperative engine created by the asymmetric thrust condition. The airplane will not yaw when an engine or a portion of the CGB fails because of the centerline thrust of the Model LM 200 airplane propulsion system installation. The flight crew will have to rely on other means to determine which engine or CGB element has failed in order to secure the correct

engine. Therefore, these proposed special conditions require that a clear indication of an inoperative engine or a failed portion of the CGB must be provided. This is necessary to preclude confusion by the flight crew in reacting to the failure and when taking appropriate action to secure the airplane in a safe condition for continued flight.

Section 23.1305 requires instruments for the fuel system, engine oil system, fire protection system, and propeller control system. This rule is intended for powerplants consisting of a single engine, gearbox, and propeller. To protect the portions of the PSU that are independent of the engines, additional instrumentation, including gearbox oil pressure, oil quantity, oil temperature, propeller speed, propeller blade angle, engine torque, and chip detection, are required.

(f) Fire Protection, Extinguishing, and Ventilation Systems

On a conventional twin engine airplane, the engines are sufficiently separated to essentially eliminate the possibility of a fire spreading from one engine to another. In the Model LM 200, the engines are in close proximity, separated only by a ballistic shield and firewall. The fire protection system of the Model LM 200 airplane must include features to isolate each fire zone from any other zone and the airplane in order to maintain isolation of the engines and CGB during a fire. Therefore, these proposed special conditions mandate that the firewall required per § 23.1191 be extended to provide firewall isolation between either engine and the CGB. Furthermore, if the potential for fire exists in the CGB compartment, these special conditions require that enough fire-extinguishing agents be available to supply the CGB compartment and one engine compartment with the CGB on a dedicated system. These proposed special conditions require that heat radiating from a fire originating in any fire zone must not affect components in adjacent compartments in such a way as to endanger the airplane. If the potential for fire does not exist within the CGB compartment, this must be substantiated by analysis.

Each fire zone should be ventilated to prevent the accumulation of flammable vapors. In addition, it must be designed such that it will not allow entry of flammable fluids, vapors, or flames from other fire zones. It should also be designed such that it does not create an additional fire hazard from the discharge vapors.

(g) *Airplane Performance*

Propeller control system failures may not be catastrophic in a conventional commuter category airplane; however, these types of failures should be demonstrated as not being catastrophic for the Model LM 200. To ensure a comparable level of safety to conventional commuter category airplanes in the event of a propeller control system failure, these proposed special conditions require that the Model LM 200 propulsion system be designed such that the airplane meets the one-engine-inoperative performance requirements of §§ 23.53, 23.67, 23.69, and 23.75 with the propeller control system failed placing the propeller in the most critical thrust producing condition with both engines operating normally.

(h) *Airplane Flight Manual*

In accordance with the exemption to § 23.3(d), the limitations section of the Airplane Flight Manual will limit the airplane to a maximum of nine passengers.

Sections 23.1583, 23.1585 and 23.1587 require pertinent information to be included in the Airplane Flight Manual. These rules are not adequate to address critical propeller failures or propeller control system failures on the Model LM 200 airplane. As a result, these proposed special conditions require that the critical procedures and information required by §§ 23.1583(b), 23.1583(c), 23.1585(a), 23.1585(c) and 23.1587(d) include consideration of these critical propeller failures or propeller control system failures in order to ensure a high level of safety for this airplane.

(i) *Suction Defueling*

The Model LM 200 design includes a suction defuel capability not envisaged when part 23 was developed. It is understood that suction defuel is a common feature in part 25 airplanes. The Model LM 200 airplane will have pressure fuel and defuel capability. Pressure defueling essentially entails reversing the pumps on the fueling vehicle and "evacuating" fuel under vacuum from the airplane through the servicing port. Section 23.979 addresses pressure fueling but not suction defueling. In addition to meeting the general requirements for part 23 fuel systems, any suction defueling components must also function as intended.

(j) *FADEC Installation*

Each of the engines will be controlled by a fully redundant full authority digital electronic control (FADEC). Each

engine will utilize two single channel FADEC's, which yields a total of four to service the PSU. Each FADEC is identical and contains engine and propeller control capability. However, only two of the four units are wired to control the propeller. Cross-FADEC communication provides automatic enabling of the automatic power reserve in case of a single engine failure during takeoff. During normal operation, one FADEC of each engine controls that engine's operation while the second FADEC remains in hot standby mode with the outputs deactivated and waiting to assume control. If the controlling unit fails, the unit in standby mode should instantly assume control of the engine and propeller (if applicable) without noticeable discontinuity.

As the sole means of controlling the engine and the primary means of controlling the propeller on the Model LM 200 airplane, the FADEC installation must comply with the system installation requirements of § 23.1309. While this rule was not developed to address the specifics of a FADEC installation, this requirement is consistent with the rule's intent to cover all complex electronic systems that perform critical functions.

Applicability

As discussed above, these special conditions are applicable to the Model LM 200. Should Ayres Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Discussion of Comments

A notice of proposed special conditions, Notice No. 23-00-03-SC, for the Ayres Corporation Model LM 200 "Loadmaster" airplane was published on August 14, 2000 (65 FR 49513). Where comments arrived without a recommended change to the special conditions, those comments are not addressed here. It should be noted that the FAA does not assume that the airplane will maintain the same level of operation and certitude as a Commuter Category airplane. Also, non-redundant propulsion systems are addressed separately from the proposed special conditions (an exemption to 14 CFR part 23, § 23.3(d), the multi-engine requirement, was needed).

Comments received with a recommendation have been resolved and the special conditions are adopted with the following revisions:

1. A helicopter engine company suggested we use "twin power section turboprop" instead of "twin power section turboshaft" under the background, the novel or unusual design features, the powerplant definition, the proposed special conditions, and the definitions.

Resolution: Adopted. "Twin power section turboshaft" has been changed to "twin power section turboprop."

2. The same commenter recommends we revise the definition of "combi" configuration in the background section by adding the phrase "up to nine passengers" to clarify it.

Resolution: Adopted. The comment further clarifies that the LM 200 will be limited by the type certificate to a maximum of nine passengers in any configuration.

3. One commenter recommended that we clarify that the one-hour continue-to-run capability of the combining gearbox is after a failure of the primary lubrication system. A double failure that also fails the emergency lubrication system may not provide this capability. Therefore, the commenter suggests rewording paragraphs (b) and 2(b)(3)(vi).

Resolution: The intent of the special condition was not to address the primary system failures only but single failures of the entire CGB lubrication system. A lubrication system failure that would not affect the ability for continued operation, as with the emergency lubrication system, indicated by the commenter, would meet the requirement. In these special conditions the words "a failure" regard multiple, independent failures and cascading failures. Multiple, independent failures need not be addressed. However, cascading failures resulting from a single failure would still need to be addressed.

The confusion appears to be caused by reference to "primary lubrication system" in section (b) "Powerplant Requirements". All other discussions refer to it as the "CGB lubrication system". Therefore, "primary" in section (b) will be replaced with "CGB" for consistency with the rest of the proposed Special Conditions.

4. LHTEC indicated that the entire Part 33 CTP800-4T powerplant, including the combining gearbox (CGB), will undergo a 1500 hour Time to Initial Maintenance Inspection Interval FAA certification test, per 14 CFR part 33, § 33.90. They believe, since the CGB is a component of the FAR 33 powerplant, this test should be used to establish the CGB inspection interval rather than the special condition 200 hour endurance test. Therefore, they recommend revising paragraphs (b) and paragraph 2.

Resolution: Not adopted. As stated on page 49516, Description of Proposed Requirements, paragraph (b), "Current engine certification regulations do not adequately address the requirements of a single combining gearbox; therefore, in addition to the engine requirements of § 23.903, the CGB will be required to complete a 200 hour endurance test that is patterned after the rotor drive system requirements of § 29.923. The endurance test is intended to exercise the integration of the engines, combining gearbox and loading characteristics of the intended propeller." Therefore, the intent of the special condition is not met with current part 33 standards. However, if the requirements of the special condition are adequately met during engine certification, this data may be used.

5. When the special conditions sections were renumbered from the prior drafts for publication, several section references within the text were not updated to correspond with the new section numbers.

Resolution: Adopted. The paragraphs will be renumbered as recommended.

6. A commenter recommended defining the LHTEC acronym at the beginning of the preamble and the special conditions:

Resolution: Adopted. The acronym will be defined as recommended.

7. A commenter suggested that we add missing word "interval" after "inspection" in paragraph 2(b)(4)(ii):

Resolution: Adopted. The word "interval" will be added.

8. A commenter requested that we correct the section heading for 2(b)(4)(iii)(c) to change paragraph (c) to a lower case (c):

Resolution: Adopted. Case will be changed to lower "c."

9. A commenter had the following concerns on issues affecting safety levels in the LM200 design:

For conventional twin engine Joint Aviation Requirements (JAR) 23 commuter airplanes, the probability of a hazardous or catastrophic event resulting from a turbine engine or propeller failure is in the order of 2×10^{-7} per hour. Accordingly, the reliability of the LM200 Propulsion System Unit (PSU) should maintain this safety target. Also, the JAA's ANPA on the subject of single engine IFR/Night operations contains a target fatal accident rate of 5×10^{-6} .

Resolution: Not adopted. Recommendations made are considerations for compliance with already existing part 23 requirements (i.e., 14 CFR, part 23, § 23.903(c)) or the requirements are already contained in

the proposed special conditions and do not require additional requirements.

10. The Civil Aviation Authority notes that under the background there is a statement that the aircraft will be limited to a maximum of nine passengers. It is not clear whether this affects the certification requirements. If the LM200 will be operated as a commuter category aircraft, then the reliability/safety target should be the same as existing commuter airplanes. If the FAA intends something different than this, the commenter believes it should be stated in the FAA Issue Paper.

Resolution: Not adopted. As previously discussed, this is addressed separately from the proposed special conditions (an exemption to 14 CFR, part 23, § 23.3(d), the multi-engine requirement was needed).

11. Also under the background, the same commenter states that the issues to be considered include prevention of single failures resulting in unacceptable levels of unbalance and the capability to continue safe flight to a landing. The background also states that the possibility of catastrophic failure modes should be minimized. The commenter believes that the word minimize is too subjective and would like to have specific safety targets. Acceptable wording could be something along the lines of "the possibility of catastrophic failure modes should be such that the overall catastrophic failure rate will remain equivalent to that of existing commuter airplanes." Again, if this is not the FAA's intention, this needs to be clarified in the FAA Issue Paper.

Resolution: Not adopted. The intention was not to maintain the same level of safety as the current Commuter Category airplanes but rather to develop requirements for the unique design features of the airplane, per 14 CFR, part 21, § 21.16.

12. The Civil Aviation Authority (CAA) notes that under the type certification basis, in the 'FAA Position,' the paper states that engine isolation is a significant requirement with respect to this 'new' powerplant configuration. The CAA concurs with the FAA's position that the existing requirements (23.903(c)) are adequate. However as both engines are to be certificated together with the CGB as a single powerplant, the requirement for § 23.903 should be added as a special condition to the powerplant certification basis.

Resolution: Not adopted. The commenter is addressing the engine certification basis/requirements while the proposed special conditions address airplane requirements.

17. The Civil Aviation Authority had some concerns about the definitions of powerplant, engine, propulsion system unit, and multi-engine. They made the following recommendation:

Powerplant—Agree with the definition; do not see the relevance of stating power output.

Engine—Simply state which parts of the powerplant constitute an engine.

Propulsion System Unit—States that the CGB lubrication system is part of the PSU. (Note: As this equipment is fundamental to powerplant reliability, it will need to be represented accurately in the powerplant safety analysis.)

Multi-engine—Term does not need to be defined and its use in this context is misleading. The OEI capability of the powerplant will be defined during certification. It is made clear that "multi-engine" for this configuration does not satisfy the requirement of JAR 23.1(a)(2), this being interpreted as requiring independent propulsion systems. This definition describes the intent to type certificate the powerplant and not the engine. This is a fundamental issue and should not be addressed only under definitions.

Resolution: The changes were not adopted. We believe that the definitions do help with the understanding that the powerplant system and its installation is unique.

18. The CAA asked that the FAA base the failure analysis of the PSU on JAR E510 and JAR P70 as it comprises engines, CGB, and a propeller.

Resolution: Not adopted. We believe that the safety assessment and critical parts control requirements proposed, which are based upon standards currently used by turboshaft engines used in rotorcraft, are sufficient to address the level of certitude needed for this installation.

19. The CAA recommends actions for (1) engine certification requirements and (2) special conditions to address the CGB lubrication system.

Resolution: (1) Not adopted. The proposed special conditions address airplane requirements and not engine certification requirements. (2) Special Conditions are proposed for the CGB lubrication system (i.e., ability to continue flight after a lubrication system failure).

20. The Civil Aviation Authority recommends that the special conditions address the effect of environmental factors, such as bird and lightning strike, to assess the PSU and to demonstrate that the PSU will continue to provide thrust in such an event.

Resolution: Not adopted. There is nothing unique about the installation to

require unique considerations of environmental conditions.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, as delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Ayres Corporation Model LM 200 airplanes.

Definitions

For purposes of this certification program and subsequent special conditions, the following definitions will apply:

Powerplant—The Light Helicopter Turbine Engine Company (LHTEC) Model CTP800-4T powerplant, consists of two CTS800 derivative turboprop engines, a GKN Westland combining gearbox (CGB), and the engine assembly support structure. The powerplant is capable of providing 2,700 shp combined output power at takeoff and 1,350 shp with one engine inoperative. The CTP800-4T powerplant will obtain a 14 CFR part 33 type certificate identifying the powerplant as a "twin power section turboprop assembly."

Engine—An LHTEC CTS800 derivative, non-regenerative, front drive, free turbine power section, which includes compressor, combustor, turbine and accessories group. Each engine of the CTP800-4T is separately controlled by a fully redundant full authority digital electronic control (FADEC). The two engines will only be certified as part of the CTP800-4T powerplant. The CTP800-4T type certificate data sheet will include ratings and limitations for each engine in addition to that of the powerplant.

Engine Assembly Support Structure—The supporting structure that connects the two engines to the CGB. This structure will be 14 CFR part 33 certified as part of the CTP800-4T powerplant.

Propulsion System Unit (PSU)—The LHTEC Model CTP800-4T powerplant plus the airframe-mounted non-integrated lubrication system components, which include the CGB oil tank and CGB/engine oil cooler as well as a single Hamilton Sundstrand 568F-11 propeller system.

Combining Gearbox (CGB)—All components necessary to transmit power from the engines to the propeller. This includes couplings, supporting bearings for shafts, brake assemblies, clutches, gearboxes, transmissions, any attached accessory pads or drives, and any cooling fans that are attached to, or mounted on, the gearbox. The CGB will be 14 CFR part 33 certified as part of the CTP800-4T powerplant.

Multi-Engine—For the Model LM 200 and its powerplant configuration, "multi-engine" refers to the twin engine capability and ratings of the CTP800-4T powerplant in regard to type certification in the commuter category and flight operations.

One Engine Inoperative (OEI)—For the Model LM 200 airplane, "one engine inoperative" refers to a condition in which one engine of the CTP800-4T powerplant is not operational and the operation of the propeller is unchanged.

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Ayres Corporation Model LM 200 airplanes.

1. PSU Reliability

(a) A PSU System Safety Analysis is required and must identify all hazardous or catastrophic failures associated with the unique design of the PSU. The analysis must consider factors such as lack of redundancy, quality of manufacture and maintenance for continued airworthiness, including consideration of anticipated human errors. Critical procedures must be identified for consideration as required inspection items.

(b) Critical part failures identified in the PSU System Safety Analysis, which result in hazardous or catastrophic events on the airplane, shall be controlled via a Critical Parts Plan. The Critical Parts Plan must be established to ensure that each critical part is designed and then controlled through manufacture and maintained throughout its service life by the following:

- (1) Enhanced procurement and manufacturing techniques,
- (2) Continued airworthiness requirements,
- (3) Conservative life limits.

Additionally, best industry practices shall be utilized in the definition and implementation of these critical parts.

(c) Critical failure modes identified in the PSU System Safety Analysis, which could occur due to the indirect failure of a component or system, should be addressed with appropriate design features to mitigate the potential results of such events.

(d) An appropriate inspection interval and instructions shall be established for any possible latent failure of fail-safe backup components.

(e) All fail-safe designs must be approved by test or analysis under the most adverse operational conditions and failure modes. A means of annunciating failure of the primary system, which could affect the safe operation of the airplane, must be provided to the pilot or maintenance crew.

2. Powerplant Requirements

(a) Vibration.

(1) It must be demonstrated by analysis, test, or combination thereof, that high-energy rotating turbomachinery failures that create high-energy rotor unbalance should not affect the operation of the CGB, the healthy engine by vibration transmitted through the CGB, the integrity of the airframe, powerplant, engine mounts, or the engine assembly support structure and attachments, or prevent continued safe flight and landing.

(2) High-energy fragment and fire shielding and surrounding engine structure and attachments, if attached to the engine, should be included in the rotor dynamics analysis or any test that affects the rotors.

(b) CGB Design, Endurance Testing and Additional Tests.

(1) CGB Design. The CGB must meet the requirements as set forth in paragraphs 2(b)(1)(i) through 2(b)(4).

(i) The CGB must incorporate a device to automatically disengage any engine from the propeller shaft if that engine fails.

(ii) The oil supply for components of the CGB that require continuous lubrication must be sufficiently independent of the lubrication systems of the engine(s) to ensure operation without damage to the CGB, with any engine inoperative. Each independent lubrication system must function properly in the flight attitudes and atmospheric conditions in which an airplane is expected to operate.

(iii) Torque limiting means must be provided on all accessory drives that are located on the CGB in order to prevent the torque limits established for those drives from being exceeded.

(2) CGB Endurance Tests. Each part tested, as prescribed in this section, must be in serviceable condition at the end of the tests. No intervening

disassembly that might affect these results may be conducted. An endurance test report explaining the test results and documenting the pre- and post-test wear measurements should be completed.

(i) Endurance tests; general. In addition to the 150-hour powerplant test requirements of § 33.87, the CGB must be tested as prescribed in paragraphs 2(b)(2)(ii) through 2(b)(2)(ix), for at least 200 hours plus the time required to meet paragraph 2(b)(2)(ix). These tests must include the engines as well as the vibration and loading characteristics of the propeller and allowable takeoff imbalance tolerance. For the 200-hour portion, these tests must be conducted as follows:

(A) Twenty each, ten-hour test cycles consisting of the test times and procedures in paragraphs 2(b)(2)(i) through 2(b)(2)(viii); and

(B) The test torque must be determined by actual powerplant limitations.

(ii) Endurance tests; takeoff torque run. The takeoff torque endurance test must be conducted as follows with both engines operating at, or CGB input shafts loaded to, the same conditions:

(A) The takeoff torque run must consist of one hour of alternating runs of five minutes operating at the torque and speed corresponding to takeoff power, and five minutes at as low a powerplant idle speed as practicable. This should be done with no airframe power extractions to produce the highest takeoff torque and lowest idle.

(B) Deceleration and acceleration must be performed at the maximum rate. (This corresponds to a one-second power setting change from idle to takeoff and one second from takeoff to idle setting.) This should also be conducted with no airframe power extractions.

(C) The time duration of all engines at takeoff power settings must total one hour and does not include the time at idle and the time required to go from takeoff to idle and back to takeoff speed.

(iii) Endurance tests; maximum continuous run. Three hours of continuous operation, at the torque corresponding to maximum continuous power and speed, must be conducted with maximum airframe power extractions.

(iv) Endurance tests; 90 percent of maximum continuous run. One hour of continuous operation, at the torque corresponding to 90 percent of maximum continuous power at maximum continuous rotational propeller shaft speed with maximum airframe power extractions.

(v) Endurance tests; 80 percent of maximum continuous run. One hour of continuous operation, at the torque corresponding to 80 percent of maximum continuous power at the minimum rotational propeller shaft speed intended for this power with maximum airframe power extractions.

(vi) Endurance tests; 60 percent of maximum continuous run. Two hours of continuous operation, at the torque corresponding to 60 percent of maximum continuous power at the minimum rotational propeller shaft speed intended for this power with maximum airframe power extractions.

(vii) Endurance tests; engine malfunctioning run. It must be determined whether malfunctioning of components, such as the engine fuel or ignition systems, or unequal engine power distribution can cause dynamic conditions detrimental to the drive system. If so, a suitable number of hours of operation must be accomplished under those conditions, one hour of which must be included in each cycle and the remaining hours of which must be accomplished at the end of 20 cycles. This testing is to be divided between the following four conditions by alternating between cycles: (1) engine #1 "ON"/engine #2 "IDLE"; (2) engine #1 "ON"/engine #2 "OFF"; (3) engine #1 "IDLE"/engine #2 "ON"; (4) engine #1 "OFF"/engine #2 "ON". If no detrimental condition results, an additional hour of operation in compliance with paragraph (B) of this section must be conducted. This will require 100 percent transfer of the airframe air, electrical, and hydraulics to the operating engine within approved Installation Manual limitations.

(viii) Endurance tests; overspeed run. One hour of continuous operation must be conducted at the torque corresponding to maximum continuous power and at 110 percent of rated maximum continuous rotational propeller shaft speed. This should be performed without airframe power extractions for highest speed. If the overspeed is limited to less than 110 percent of maximum continuous speed by the speed and torque limiting devices, the speed used must be the highest speed allowable assuming that speed and torque limiting devices, if any, function properly.

(ix) Endurance tests; one-engine-inoperative application. A total of 160 full differential power applications must be made at takeoff torque and RPM. If, during these tests, it is found that a critical dynamic condition exists, an investigative assessment to determine the cause shall be performed throughout the torque/speed range. In each of the

160 power setting cycles (160 per engine) a full differential power application must be performed. In each cycle, the transition from clutch engagement to disengagement must occur at the critical condition for clutch and shaft wear.

(3) Additional CGB Tests. Following the 200-hour endurance test, and without any intervening major disassembly, additional dynamic, endurance, and operational test and vibratory investigations must be performed to determine that the drive mechanism is safe. The following additional tests and conditions apply:

(i) If the torque output of both engines to the CGB can exceed the highest engine or CGB torque limit, the following tests must be conducted. Under conditions with both engines operating, apply 200 cycles to the CGB for 10 seconds each of an input torque that is at least equal to the lesser of—

(A) The maximum torque used in complying with paragraph 2(b)(3)(ii) plus 10 percent; or

(B) The maximum torque attainable under normal operating conditions, assuming that any torque limiting devices function properly.

(ii) With each engine alternately inoperative, apply the maximum transient torque attainable under normal operating conditions, assuming that any torque limiting devices function properly. Each CGB input must be tested at this maximum torque for at least one hour.

(iii) The CGB must be subjected to 50 overspeed runs, each 30 plus or minus 3 seconds in duration, at a speed of at least 110 percent of maximum continuous speed or other maximum overspeed that is likely to occur plus a margin of speed approved by the Administrator for that overspeed condition. These runs must be conducted as follows:

(A) Overspeed runs must be alternated with stabilizing runs from 1 to 5 minutes duration, each 60 to 80 percent of maximum continuous speed.

(B) Acceleration and deceleration must be accomplished in a period no longer than 10 seconds, and the time for changing speeds may not be deducted from the specified time for the overspeed runs.

(iv) Each part tested, as prescribed in this section, must be in serviceable condition at the end of the tests. No intervening disassembly that might affect test results may be conducted.

(v) If drive shaft couplings are used and shaft misalignment or deflections are probable, loads must be determined in establishing the installation limits

affecting misalignment. These loads must be combined to show adequate fatigue life.

(vi) The CGB must be able to continue safe operation, although not necessarily without damage, at a torque and rotational speed prescribed by the applicant that is determined to be the most critical of the anticipated flight conditions for at least one hour after perception by the flight crew of the CGB primary lubrication system failure or loss of lubricant. The demonstrated torque and rotational speed must be included in the instruction manual for installing and operating the engine required in 14 CFR part 33.5.

(4) Fatigue Evaluation. The critical parts of the CGB must be shown by analysis supported by test evidence and, if available, service experience to be of fatigue tolerant design. The fatigue tolerance evaluation must include the requirements of either paragraph (2)(b)(4)(i), (ii), or (iii) of this section, or a combination thereof, and must include a determination of the probable locations and modes of damage caused by fatigue, considering environmental effects, intrinsic/discrete flaws, or accidental damage. Compliance with the flaw tolerance requirements of paragraph (2)(b)(4)(i) or (ii) of this section is required unless the applicant establishes that these fatigue flaw tolerant methods for a particular part cannot be achieved within the limitations of geometry, inspectability, or good design practice. Under these circumstances, the safe-life evaluation of paragraph (iii) of this section is required.

(i) Fatigue tolerant safe-life evaluation. It must be shown that the critical part, with flaws present, is able to withstand repeated loads of variable magnitude without detectable flaw growth for the following time intervals—

(A) Life of the airplane; or

(B) Within a replacement time furnished in the Instructions for Continued Airworthiness.

(ii) Fail-safe (residual strength after flaw growth) evaluation. It must be shown that the critical part after a partial failure is able to withstand design limit loads without failure within an inspection interval per the Instructions for Continued Airworthiness. Limit loads are defined in § 23.301(a).

(A) The residual strength evaluation must show that the critical part after flaw growth is able to withstand design limit loads without failure within its operational life.

(B) Inspection intervals and methods must be established as necessary to ensure that failures are detected prior to

residual strength conditions being reached.

(C) If significant changes in structural stiffness or geometry, or both, follow from a structural failure or partial failure, the effect on flaw tolerance must be further investigated.

(iii) Safe-life evaluation. It must be shown that the critical part is able to withstand repeated loads of variable magnitude without detectable cracks for the following time intervals—

(A) Life of the airplane; or

(B) Within a replacement time furnished in the Instructions for Continued Airworthiness.

(C) Powerplant and Engine Mounts.

(1) All principal structural elements of the powerplant and engine mount structure that could fail as a result of an uncontained engine failure or resulting fire must be fail-safe as defined in § 23.571(b). All other principal structural elements of the powerplant and engine mount system must either be fail-safe or meet the damage tolerance criteria of § 23.574(a).

(i) For fail-safe design:

(A) The fail-safe structure must be able to withstand the limit loads, considered as ultimate, given in §§ 23.361 and 23.363.

(B) If the occurrence of load-inducing propeller control system malfunctions is less frequent than 1×10^{-5} occurrences per flight hour, and if it can be demonstrated that failure or partial failure of a structural element would be obvious, the engine torque loads of § 23.361(a)(3) do not need to be considered in the fail-safe design.

(ii) If damage tolerance evaluation is used,

(A) The residual strength evaluation must consider the limit loads, considered as ultimate, given in §§ 23.361 and 23.363.

(B) If the occurrence of load-inducing propeller control system malfunctions is less frequent than 1×10^{-5} occurrences per flight hour, the engine torque loads of § 23.362(a)(3) do not need to be considered in the residual strength evaluation.

3. Propeller Installation

(a) The applicant must complete a 2,500 airplane cycle evaluation of the propeller installation. A cycle must include the power levels associated with ground idle, takeoff, climb cruise, and descent. This evaluation may be accomplished on the airplane in a combination of ground and flight cycles or on a ground test facility. If the testing is accomplished on a ground test facility, the test configuration must include sufficient interfacing system hardware to simulate the actual airplane

installation, including the engines, CGB, and mount system. Each part tested, as prescribed in this section, must be in serviceable condition at the end of the tests. No intervening disassembly, other than normal maintenance (as defined for the installation), that might affect these results may be conducted. A test report explaining the test results and documenting the pre- and post-test condition should be completed.

(b) Propeller Unbalance. It must be shown by a combination of testing and analysis that any single failure or probable combination of failures not deemed a critical part under paragraph 1(b) that could cause an unbalanced propeller condition will not cause damage to the engines, CGB, powerplant mount system, primary airframe structure, or to critical equipment that would jeopardize the continued safe flight and landing of the airplane. Furthermore, the degree of flight deck vibration must not jeopardize the crew's ability to continue to operate the airplane in a safe manner. The magnitude and frequency of the vibration should be included in the installation manual. Any part (or parts) whose failure (or combination of failures) would result in a propeller unbalance greater than the defined maximum should also be classified as critical.

(c) A means must be provided to prevent any adverse effect resulting from rotation of the propeller, in either direction, on the ground.

4. Propeller Control System

(a) The propeller control must be independent of the engines such that a failure in either engine or any engine control system will not result in failure to control the propeller.

(b) The propeller control system must be designed to minimize the occurrence of any single failure that would prevent the propulsion system from producing thrust at a level required to meet §§ 23.53(c), 23.67(c), 23.69, 23.75, and 23.77(c).

(c) An uncommanded propeller pitch change must not result in an unsafe condition and an indication of the failure must be annunciated to the flight crew.

5. PSU Instrumentation

(a) Engine Failure Indication. A means must be provided to indicate when an engine is no longer able to provide torque, or to provide stable torque, to the propeller. This means may consist of instrumentation required by other sections of part 23 or these special conditions if it is determined that those instruments will readily alert the flight

crew when an engine is no longer able to provide torque, or to provide stable torque, to the propeller. This indicator must preclude confusion by the flight crew in reacting to the failure and when taking appropriate action to secure the airplane in a safe condition for continued flight.

(b) *Engine/Propeller Vibration Exceedance Indication.* A means must be provided to indicate when the PSU vibration levels exceed the maximum vibration level defined for continuous operation. Procedures to respond to this exceedance should be included in the AFM.

(c) The engine instrumentation requirements of § 23.1305 (a), (c), and (e) shall apply to each engine as defined in these special conditions.

(d) In addition to the requirements of § 23.1305, the following instruments must be provided:

(1) An oil pressure warning means and indicator for the pressure-lubricated CGB to indicate when the oil pressure falls below a safe value.

(2) A low oil quantity indicator for the CGB, if lubricant is self-contained;

(3) An oil temperature warning device to indicate unsafe CGB temperatures;

(4) A tachometer for the propeller;

(5) A propeller pitch control failure indication;

(6) A torque meter for each engine if the sum of the maximum torque that each engine is capable of producing exceeds the maximum torque for which the CGB has been certified under 14 CFR part 33; and

(7) A chip detecting and indicating system for the CGB.

6. Fire Protection, Extinguishing, and Ventilation Systems

(a) Each engine must be isolated from the other engine and CGB by firewalls, shrouds or equivalent means. Each firewall or shroud, including applicable portions of the engine couplings, must be constructed such that no hazardous quantity of liquid, gas, or flame can pass between the isolated fire zone of each engine or the CGB compartment.

(b) In addition to the engine fire zones, if the potential for fire exists in the CGB compartment, then the CGB must be in a separate fire zone and must comply with all fire protection requirements of 14 CFR part 23. Enough fire-extinguishing agent will be required for the CGB compartment and at least one engine compartment. A dedicated fire extinguishing system will be required for the CGB compartment. If the potential for fire does not exist within the CGB compartment, this must be substantiated by analysis.

(c) Firewall temperatures under all normal or failure conditions must not result in auto-ignition of flammable fluids and vapors present in the other engine compartment and the CGB compartment.

(d) The CGB compartment ventilation system must be designed such that:

(1) It is ventilated to prevent the accumulation of flammable vapors.

(2) No ventilation opening may be where it would allow the entry of flammable fluids, vapors or flame from other zones.

(3) Each ventilation means must be arranged so that no discharged vapors will cause an additional fire hazard.

(4) Unless the extinguishing agent capacity and rate of discharge are based on maximum airflow through the compartment, there must be a means to allow the crew to shut off sources of forced ventilation.

7. Cargo or baggage compartment requirements

(a) Flight tests must demonstrate means to exclude hazardous quantities of smoke, flames or extinguishing agent from any compartment occupied by the crew or passengers.

(b) Cargo compartments shall have either fire or smoke detection provisions, or both, unless the compartment location is such that a fire can be easily detected by the pilots seated at their duty station. The cargo and baggage fire protection must be in accordance with § 23.855 as well as the following:

(1) The detection system must provide a visual indication to the flight crew within one minute after the start of a fire.

(2) The system must be capable of detecting a fire at a temperature significantly below that at which the structural integrity of the airplane is substantially decreased.

(3) There must be means to allow the crew to check the functioning of each fire detector circuit while in flight.

(4) The detection system effectiveness must be shown for all approved operating configurations and conditions.

(c) The flight crew must have means to shut off the ventilating airflow to, or within, the compartment from the pilot's station on the all-cargo configuration.

(d) Passenger and combi configurations, where the cargo compartment is not accessible to the flight crew, must have an approved built-in fire extinguishing system. The built-in fire extinguishing system shall be controllable from the pilots' station. There must be means to control ventilation and drafts within the

inaccessible cargo compartment so that the extinguishing agent can control any fire that may start within the compartment. The built-in fire extinguisher must be installed so that no extinguishing agent likely to enter personnel compartments will be hazardous to the occupants. The discharge of the extinguisher must not cause structural damage. The capacity of the extinguishing system must be adequate for any fire likely to occur in the compartment where used. Consideration must be given to the volume of the compartment and the ventilation rate.

(e) In addition to the hand fire extinguishers required by § 23.851, a hand fire extinguisher must be readily accessible for use in each cargo or baggage compartment that is accessible to crewmembers in flight. Hazardous quantities of smoke, flames or extinguishing agent must not enter any compartment occupied by the crew or passengers when the access to that compartment is used.

(f) Protective breathing equipment must be installed for crewmembers in each crewmember compartment.

Protective breathing equipment must:

(1) Be designed to protect the flight crew from smoke, carbon dioxide, and other harmful gases at the pilot's station and while combating fires in cargo compartments.

(2) Have masks that cover the eyes, nose, and mouth; or masks that cover the nose and mouth plus accessory equipment to cover the eyes.

(3) Allow the flight crew to use the radio equipment and to communicate with each other while at their assigned stations.

(4) Not cause any appreciable adverse effect on vision and must allow corrective glasses to be worn.

(5) Supply protective oxygen of 15 minutes duration per crewmember at a pressure altitude of 8,000 feet with a respiratory minute volume of 30 liters per minute BTPD. If a demand oxygen system is used, a supply of 300 liters of free oxygen at 70° F and 760 mm. Hg. pressure is considered to be of 15 minute duration at the prescribed altitude and minute volume. If a continuous flow protective breathing system is used (including a mask with a standard rebreather bag) a flow rate of 60 liters per minute at 8,000 feet (45 liters per minute at sea level) and a supply of 600 liters of free oxygen at 70° F and 760 mm. Hg. pressure is considered to be of 15 minute duration at the prescribed altitude and minute volume. BTPD refers to body temperature conditions (that is, 37° C, at ambient pressure, dry).

(6) Be free from hazards in itself, in its method of operation, and in its effect upon other components.

(7) Have a means to allow the crew to readily determine, during flight, the quantity of oxygen available in each source of supply.

8. Airplane Performance

(a) In addition to the takeoff performance requirements of § 23.53(c), the same requirements must be met with both engines operating normally and the propeller primary control system failed in the most critical thrust producing condition at VEF and above, considering all single point failures.

(b) In addition to the one engine inoperative climb requirements of § 23.67(c), the same requirements must be met with both engines operating normally and the propeller primary control system failed in the most critical thrust producing condition, considering all single point failures.

(c) In addition to the requirements of § 23.69, the steady gradient and rate of climb/descent must be determined at each weight, altitude, and ambient temperature within the operational limits established by the applicant with both engines operating normally and the propeller primary control system failed in the most critical thrust producing condition, considering all single point failures.

(d) In addition to § 23.75, the horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface must be determined as required in § 23.75 with both engines operating normally and the propeller primary control system failed in the most critical thrust producing conditions, considering all single point failures.

(e) The balked landing requirements of § 23.77(c) must be performed with the propeller primary control system failed in the most critical thrust producing condition, considering all single point failures.

9. Airplane Flight Manual

(a) In addition to the requirements of §§ 23.1583(b) and 23.1585(a), a pre-flight visual inspection of the propeller components must be included in the Airplane Flight Manual.

(b) In addition to the requirements of § 23.1585(c), procedures for maintaining or recovering control of the airplane in all conditions identified in section 8 of these special conditions must be included in the Airplane Flight Manual.

(c) The information required by § 23.1583(c)(4) and § 23.1587(d) must be furnished with the propeller control

system failed or with one engine inoperative, whichever is more critical.

10. Suction Defueling

(a) The airplane defueling system (not including fuel tanks and fuel tank vents) must withstand an ultimate load that is 2.0 times the load arising from maximum permissible defueling pressure (positive or negative) at the airplane fueling connection.

11. FADEC Installation

(a) The installation of the electronic engine/propeller control (FADEC control system) must comply with the requirements of § 23.1309 (a) through (e).

Issued in Kansas City, Missouri on September 24, 2001.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25084 Filed 10-4-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE170, Special Condition 23-109-SC]

Special Conditions; Byerly Aviation; Twin Commander Models 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Byerly Aviation, Inc., Greater Peoria Regional Airport, 6100 EM Dirksen Parkway, Peoria, Illinois 61607, for a Supplemental Type Certificate for Twin Commander model series 690/695 airplanes. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic flight instrument system (EFIS), manufactured by Meggitt Avionics, for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to

establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is September 17, 2001. Comments must be received on or before November 5, 2001.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE170, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE170. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket No. CE170." The postcard will be date stamped and returned to the commenter.

Background

On December 18, 2000, Byerly Aviation Inc., Greater Peoria Airport., 6100 Everitt M Dirksen Parkway, Peoria, Illinois 61607, made an application to the FAA for a new Supplemental Type Certificate for Twin Commander model series 690/695 airplanes. The Twin Commander model series 690/695 airplanes are currently approved under TC No. 2A4. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Byerly Aviation, Inc. must show that their modification to Twin Commander model 690, 690A, 690B, 690C, 690D, 695, 695A, & 695B aircraft meets the applicable portions of the Certification Basis for each respective model as shown on Type Certificate data sheet Number 2A4, and § 23.1301 of Amendment 23-20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23-49; and § 23.1322 of Amendment 23-43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions are normally issued in accordance with § 11.38, and become a part of the type certification basis in accordance with § 21.101(d).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Byerly Aviation Inc. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF

environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and

electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined in the following table:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz—100 kHz	50	50
100 kHz—500 kHz	50	50
500 kHz—2 MHz	50	50
2 MHz—30 MHz	100	100
30 MHz—70 MHz	50	50
70 MHz—100 MHz	50	50
100 MHz—200 MHz	100	100
200 MHz—400 MHz	100	100
400 MHz—700 MHz	700	50
700 MHz—1 GHz	700	100
1 GHz—2 GHz	2000	200
2 GHz—4 GHz	3000	200
4 GHz—6 GHz	3000	200
6 GHz—8 GHz	1000	200
8 GHz—12 GHz	3000	300
12 GHz—18 GHz	2000	200
18 GHz—40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values over the complete modulation period.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts rms per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a

system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to Twin Commander 690, 690A, 690B, 690C, 690D, 695, 695A, & 695B airplanes. Should Byerly Aviation, Inc. apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.101; and 14 CFR part 11, §§ 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Twin Commander

model 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B airplanes modified by Byerly Aviation, Inc. to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on September 17, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25086 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30273; Amdt. No. 2073]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 14 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register* expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description

of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published

aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Dated: Issued in Washington, DC on September 28, 2001.

Nicholas A. Sabatini,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
08/20/01	IA	AUDUBON	AUDUBON COUNTY	1/86/16	NDB RWY 32, AMDT 5
08/20/01	OK	PAULS VALLEY	PAULS VALLEY MUNI	1/8661	GPS RWY 35, AMDT 1
08/21/01	OK	PAULS VALLEY	PAULS VALLEY MUNI	1/8663	NDB RWY 35, AMDT 3A
08/22/01	MO	CAPE GIRARDEAU	CAPE GIRARDEAU REGIONAL	1/8764	NDB OR GPS RWY 10, AMDT 9A
08/22/01	MO	CAPE GIRARDEAU	CAPE GIRARDEAU REGIONAL	1/8766	VOR RWY 10, AMDT 2
08/22/01	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	1/8771	GPS RWY 31R, ORIG
08/22/01	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	1/8779	VOR/DME RNAV RWY 31R, ORIG
08/23/01	NE	MC COOK	MC COOK MUNI	1/8825	VOR RWY 12, AMDT 11B
08/23/01	NE	MC COOK	MC COOK MUNI	1/8826	VOR OR GPS RWY 30, AMDT 10B
08/23/01	NE	MC COOK	MC COOK MUNI	1/8827	GPS RWY 12, ORIG-A
08/23/01	NE	MC COOK	MC COOK MUNI	1/8828	VOR RWY 21, AMDT 4D
08/23/01	OK	MC COOK	MC COOK MUNI	1/8831	RNAV (GPS) RWY 21, ORIG-A
08/30/01	OK	ADA	ADA MUNI	1/9122	VOR/DME RWY 17, AMDT 1B
08/30/01	OK	ADA	ADA MUNI	1/9130	GPS RWY 35, ORIG-A
09/06/01	WA	SEATTLE	BOEING FIELD/KING COUNTY INTL	1/9397	ILS RWY 13R, AMDT 28
09/06/01	WA	SEATTLE	BOEING FIELD/KING COUNTY INTL	1/9398	LOC/DME RWY 13R, AMDT 1
09/06/01	WA	SEATTLE	SEATTLE-TACOMA INTL	1/9401	ILS RWY 16R (CAT I, II, III), AMDT 12
09/06/01	WA	SEATTLE	SEATTLE-TACOMA INTL	1/9403	ILS RWY 16L, AMDT 1
09/11/01	WA	SPOKANE	SPOKANE INTL	1/9735	RNAV (GPS) RWY 3, ORIG-A
09/11/01	WA	SPOKANE	SPOKANE INTL	1/9736	RNAV (GPS) RWY 21, ORIG-A
09/11/01	WV	ELKINS	ELKINS-RANDOLPH CO-JENNINGS RANDOLPH FIELD.	1/9737	GPS RWY 23, ORIG-A
09/11/01	WV	ELKINS	ELKINS-RANDOLPH CO-JENNINGS RANDOLPH FIELD.	1/9738	GPS RWY 5, ORIG
09/12/01	CA	ONTARIO	ONTARIO INTL	1/9779	RNAV (GPS) RWY 26L, ORIG

FDC date	State	City	Airport	FDC No.	Subject
09/12/01	CA	ONTARIO	ONTARIO INTL	1/9780	RNAV (GPS) RWY 8L, ORIG
09/12/01	CA	ONTARIO	ONTARIO INTL	1/9781	RNAV (GPS) RWY 8R, ORIG
09/12/01	CA	ONTARIO	ONTARIO INTL	1/9782	RNAV (GPS) RWY 26R, ORIG
09/12/01	OR	KLAMATH FALLS	KLAMATH FALLS INTL	1/9802	ILS RWY 32, AMDT 19B
09/14/01	WA	SEATTLE	SEATTLE-TACOMA INTL	1/9922	RNAV (GPS) RWY 16R, ORIG
09/14/01	WA	SEATTLE	SEATTLE-TACOMA INTL	1/9924	RNAV (GPS) RWY 16L, ORIG
09/14/01	WA	SEATTLE	SEATTLE-TACOMA	1/9925	RNAV (GPS) RWY 34R, ORIG
09/17/01	NV	LAS VEGAS	MCCARAN INTL	1/0065	ILS RWY 25R, AMDT 16D
09/17/01	NV	LAS VEGAS	MCCARAN INTL	1/0066	ILS RWY 25L, AMDT 2B
09/17/01	NV	LAS VEGAS	MCCARAN INTL	1/0067	VOR RWY 25L/R, AMDT 2A
09/17/01	TX	BROWNSVILLE	BROWNSVILLE/SOUTH PADRE ISLAND INTL	1/0113	VOR OR TACAN OR GPS-A, AMDT 1
09/18/01	WI	SPARTA	SPARTA/FORT MC COY	1/0017	NDB RWY 29, AMDT 2
09/18/01	WI	SPARTA	SPARTA/FORT MC COY	1/0118	NDB RWY 29, AMDT 1
09/18/01	WI	SPARTA	SPARTA/FORT MC COY	1/0119	GPS RWY 11, AMDT 1
09/19/01	AL	GULF SHORES	JACK EDWARDS	1/0159	VOR OR GPS-A, AMDT 2A
09/19/01	NC	OXFORD	HENDERSON-OXFORD	1/0178	NDB OR GPS RWY 6, AMDT 1B
09/19/01	OK	OKMULGEE	OKMULGEE REGIONAL	1/0212	GPS RWY 17, ORIG
09/19/01	OK	OKMULGEE	OKMULGEE REGIONAL	1/0213	NDB RWY 17, AMDT 3B
09/19/01	OK	OKMULGEE	OKMULGEE REGIONAL	1/0214	VOR-A, ORIG
09/20/01	OK	OKMULGEE	OKMULGEE REGIONAL	1/0237	ILS RWY 17, ORIG-A
09/20/01	KY	BARDESTOWN	SAMUELS FIELD	1/0253	GPS RWY 20, AMDT 1
09/20/01	NE	OMAHA	EPPLEY AIRFIELD	1/0271	ILS RWY 18, AMDT 6C
09/20/01	NE	OMAHA	EPPLEY AIRFIELD	1/0272	ILS RWY 14R (CAT I, II, III), AMDT 2A
09/20/01	NE	OMAHA	EPPLEY AIRFIELD	1/0273	NDB OR GPS RWY 14R, AMDT 24B
09/21/01	AL	GULF SHORES	JACK EDWARDS	1/0306	GPS RWY 27, AMDT 1
09/21/01	AL	GULF SHORES	JACK EDWARDS	1/0307	RNAV (GPS) RWY 9, ORIG
09/21/01	IN	BLOOMINGTON	MONROE COUNTY	1/0319	VOR/DME RWY 35, AMDT 15
09/21/01	IN	BLOOMINGTON	MONROE COUNTY	1/0321	ILS RWY 35, AMDT 5
09/25/01	IL	CHICAGO/WEST CHICAGO	DU PAGE	1/0468	ILS RWY 1L, AMDT 1
09/25/01	IL	CHICAGO/WEST CHICAGO	DU PAGE	1/0469	VOR OR GPS RWY 1L, ORIG
09/26/01	PA	PITTSBURGH	PITTSBURTH INTL	1/0493	CONVERGING ILS RWY 28R, AMDT 2
09/26/01	PA	PITTSBURGH	PITTSBURGH INTL	1/0495	CONVERGING ILS RWY 32, AMDT 3A

[FR Doc. 01-25087 Filed 10-04-01; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30272; Amdt. No. 2072]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of

new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reappraised as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase—*Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach

Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expansive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 28, 2001.

Nicholas A. Sabatini,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25, LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective November 1, 2001

Grand Canyon, AZ, Grand Canyon National Park, VOR RWY 3, Amdt 5
Grand Canyon, AZ, Grand Canyon National Park, ILS, RWY 3, Orig
Grand Canyon, AZ, Grand Canyon National Park, ILS/DME RWY 3, Amdt 3A, CANCELLED
Grand Canyon, AZ, Grand Canyon National Park, RNAV (GPS) RWY 3, Orig
Grand Canyon, AZ, Grand Canyon National Park, GPS RWY 3, Orig, CANCELLED

Gainesville FL, Gainesville Regional, LOC BC RWY 10, Amdt 7B, CANCELLED
Ripley, MS, Ripley RNAV (GPS) RWY 21, Orig
New York, NY, John F. Kennedy Intl. RNAV (GPS) Y RWY 31L, Orig
New York, NY, John F. Kennedy Intl. RNAV (GPS) Z RWY 31L, Orig
Longview, TX, Gregg County, VOR/DME RNAV RWY 22, Amdt 6A CANCELLED
Salt Lake City, UT, Salt Lake City Intl, VOR/DME OR TACAN RWY 16L, Amdt 2
Salt Lake City, UT, Salt Lake City Intl, VOR/DME OR TACAN RWY 34R, Amdt 8
Salt Lake City, UT, Salt Lake City Intl, VOR/DME OR TACAN RWY 17, Amdt 2
Salt Lake City, UT, Salt Lake City Intl, ILS RWY 34R, Amdt 1
Salt Lake City, UT, Salt Lake City Intl, ILS RWY 16R, Amdt 1
Salt Lake City, UT, Salt Lake City Intl, ILS RWY 34L, Orig
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 34L, Amdt 1A, CANCELLED
Stafford, VA, Stafford Regional VOR RWY 33, Orig
Stafford, VA, Stafford Regional RNAV (GPS) RWY 33, Orig

* * * Effective December 27, 2001

Dillingham, AK, Dillingham, MLS RWY 1, Orig CANCELLED
Avon Park, FL, Avon Park Muni, GPS RWY 4, Orig-A
Bartow, FL, Bartow Muni, VOR/DME RWY 9L, Amdt 2A
Sebring, FL, Sebring Regional, GPS RWY 36, Orig-A
St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl, VOR RWY 35R, Orig-A
Columbus, OH, Rickenbacker Intl, ILS RWY 5R, Amdt 2

Note: The FAA published the following procedure in Docket No. 30264, Amdt No. 2065 to Part 97 of the Federal Aviation Regulations (Vol 66, FR No. 164, Page 44302; dated August 23, 2001) under section 97.29 effective 1 November 2001, which is hereby amended as follows:

St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl., NDB RWY 17L, Amdt 20C.

[FR Doc. 01-25088 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 00P-1275 and 00P-1276]

Food Labeling: Health Claims; Plant Sterol/Stanol Esters and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 45 days the comment period for the interim final rule authorizing a health claim on the association between plant sterol/stanol esters and reduced risk of coronary heart disease (CHD). This interim final rule appeared in the *Federal Register* of September 8, 2000 (65 FR 54686). Interested persons were given until November 22, 2000, to comment on the health claim. After the comment period closed, FDA received two requests to reopen the comment period; therefore, this reopening is in response to these requests.

DATES: Submit written or electronic comments by November 19, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

FOR FURTHER INFORMATION CONTACT:

James Hoadley, Center for Food Safety and Applied Nutrition (HFS-832), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5429.

SUPPLEMENTARY INFORMATION:

I. Background

In the *Federal Register* of September 8, 2000 (65 FR 54686), FDA published an interim final rule authorizing the use, on food labels and in food labeling, of a health claim on the relationship between plant sterol/stanol esters and reduced risk of CHD (the interim final rule). In the interim final rule, FDA specified requirements for a health claim about the relationship, including types of food eligible to bear the claim, sources and nature of the plant sterol/stanol esters that are the subjects of the claim, daily intakes of these substances needed to reduce the risk of CHD, and analytical methods for assessing compliance with qualifying criteria for the claim. The 75-day comment period closed on November 22, 2000.

After the comment period closed, FDA received comments from two companies, Unilever United States, Inc., and Raisio Benecol Ltd., which included requests for an extension of the comment period. Both comments requested more time for submission of data comparing the daily intake levels of plant sterol esters and plant stanol esters that are effective in reducing the risk of CHD. Because FDA cannot extend a comment period that has closed, the agency considers these as requests to reopen the comment period.

Among the other comments received in response to the interim final rule

were requests to expand the types of substances eligible for the health claim to include unesterified plant sterols/stanols and mixtures of plant sterols and plant stanols. We also received a comment advocating the use of serum apolipoprotein B level as a surrogate measure of CHD risk.

Furthermore, in the past year, both the European Commission (EC) and the Australia New Zealand Food Standards Council (ANZFS) have taken regulatory actions limiting food use of plant sterol esters and requiring advisory labeling statements on foods to which plant sterol esters have been added. Also, a recent publication from the American Heart Association (AHA) (Ref. 1) raised a concern about daily ingestion of plant sterol/stanol ester-containing foods among certain individuals who have abnormally high absorption of plant sterols.

FDA believes that the issues raised by comments and recent events are significant and that thorough evaluation is needed before a final rule is issued. Accordingly, the agency is reopening the comment period for this rulemaking. Given the very tight timeframes that are established by the health claim provisions of the statute, however (see section 403(r)(4)(A)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(4)(A)(i))), as well as the agency's interest in ensuring that scientifically valid claims are authorized as quickly as possible, the agency cautions that only on rare occasions might FDA be in a position to reopen the comment period in a health claim rulemaking. In this case, we believe that reopening the comment period to obtain public input on the new issues is important to help us make more informed decisions in the final rule. Although the statutory deadline for this final rule has passed, FDA intends to move as expeditiously as possible to complete this rulemaking.

II. Issues on Which FDA Is Requesting Comment

A. Eligibility of Unesterified Plant Sterols and Plant Stanols for the Health Claim

In the interim final rule, FDA did not include unesterified plant sterols and plant stanols in the definition of substances eligible for the health claim. Several comments requested that the agency allow foods containing the unesterified form of these substances to bear the health claim. While some of the data in support of the interim final rule were from studies involving unesterified plant sterols or plant stanols, the agency requests submission of any additional

data on the effectiveness, particularly at lower intake levels, of the unesterified forms in reducing the risk of CHD. FDA also requests data on the effects of various food matrices on the relationship of unesterified plant sterols/stanols and CHD risk.

B. Daily Intake Levels Necessary to Reduce the Risk of CHD

In the interim final rule, FDA required health claims for plant sterol/stanol esters to specify the daily intake necessary to reduce the risk of CHD. The agency set different daily intake levels for plant sterol esters and plant stanol esters (1.3 grams/day (g/d) and 3.4 g/d, respectively), based on studies that showed differences in the levels of intake that were effective in reducing low-density lipoprotein (LDL) and blood total cholesterol levels. Many comments argued that one of the daily intake levels should be changed; several comments argued that the daily intake levels for plant sterol esters and plant stanol esters should be the same. FDA requests further comment on these issues, including supporting data on the daily intake levels of plant sterols and plant stanols (in either esterified or unesterified form) that are effective in reducing the risk of CHD.

C. Eligibility of Mixtures of Plant Sterols and Plant Stanols for the Health Claim

In the interim final rule, FDA authorized separate health claims for plant sterol esters and plant stanol esters. One comment requested that FDA include mixtures of plant sterols and stanols in the definition of substances eligible to bear the health claim. FDA requests data on the daily intake levels of mixtures of plant sterol esters and plant stanol esters (or mixtures of the unesterified forms) that are effective in lowering CHD risk. If plant sterols and plant stanols (in either esterified or unesterified form) are not equally beneficial at the same levels of intake in reducing CHD risk (as evidenced by validated surrogate markers), FDA also requests data on the relative amounts of plant sterols and plant stanols (in either esterified or unesterified form) in the mixtures that should qualify a food to bear the health claim.

D. Significance of Apolipoprotein B Concentration as a Surrogate Marker for CHD Risk

One comment seeking a lower daily effective intake level for plant stanol esters, argued that plasma apolipoprotein B level is a reliable marker of LDL cholesterol that can be measured precisely and directly, in

contrast to serum LDL cholesterol level, which usually is determined indirectly by calculation. The comment further argued that plasma apolipoprotein B level is a reliable marker in evaluating the risk of cardiovascular disease. These comments were discussed in relation to the study by Hallikainen et al. (Ref. 2). In the Hallikainen et al. study, the lowest intake of plant stanol esters that reduced serum LDL cholesterol was greater than the intake that reduced serum apolipoprotein B. Thus, the comment asserted these results support a lower daily effective intake level for plant stanol esters than that established in the interim final rule.

FDA requests comment on use of serum apolipoprotein B as a validated surrogate marker for CHD and on the relative utilities of apolipoprotein B and LDL cholesterol in predicting CHD risk.

E. Issues Regarding Safe Use of Plant Sterol/Stanol Esters in Foods and Advisory Label Statements

Since the issuance of the plant sterol/stanol esters interim final rule, FDA has become aware of pertinent regulations from other countries. The EC issued a regulation that requires the label of foods to which plant sterol esters have been added to include certain statements (Ref. 3). Such statements include: (1) The product is for people who want to lower their blood cholesterol levels; (2) patients on cholesterol lowering medication should consume the product only under medical supervision; (3) the product may not be appropriate nutritionally for certain segments of the population (pregnant and breast-feeding women, and children under the age of 5 years); and (4) the product should be used as part of a healthy diet, including regular consumption of fruit and vegetables. The EC explained that statements (3) and (4) were necessary to protect populations at risk (people whose vitamin A status was not optimal) since these products may cause a reduction in plasma beta-carotene (Ref. 3).

The ANZFS adopted the standard, recommended by the Australia New Zealand Food Authority (Ref. 4), that plant sterol esters should be allowed for use only in edible oil spreads, and that the product must carry an advisory label statement. The advisory label statement informs consumers that plant sterol ester-enriched edible oil spreads are not appropriate for infants, children and pregnant and lactating women, and that people using cholesterol-reducing medication should seek medical advice before using the spreads.

The AHA (Ref. 1) recently published a statement for healthcare professionals

on foods containing plant sterol/stanol esters. One of the issues that the AHA raised concerned individuals who have unusually high intestinal absorption of plant sterols. Plant sterols are poorly absorbed by the human intestine, but individuals who are homozygous for a rare genetic disease, sitosterolemia (also known as phytosterolemia), are high absorbers of plant sterols, resulting in tendon and subcutaneous xanthomas (skin lipid deposits). It is not known if individuals heterozygous for this condition absorb higher amounts of plant sterols than the normal population or if this would lead to adverse effects. In the absence of more data on the genetic mutation involved in sitosterolemia, the AHA recommends that individuals with this condition not use foods containing plant sterols/stanols.

Section 201(n) of the the act (21 U.S.C. 321(n)) states that, in determining whether labeling is misleading, the agency shall take into account not only representations made about the product, but also the extent to which the labeling fails to reveal facts material in light of such representations or material with respect to consequences that may result from use of the product. The omission of material facts from the labeling of a food causes the product to be misbranded within the meaning of sections 201(n) and 403(a)(1) of the act. FDA may require disclosure of material facts in labeling by rulemaking or by direct enforcement action (see 21 CFR 1.21).

In light of the issues raised by recent regulatory actions of other countries and by the AHA statement (i.e., whether foods containing plant sterol esters should be used under medical supervision, the appropriateness of consumption of such foods by some subpopulation groups, negative effect of such foods on plasma beta-carotene, and concerns about potential hyper-absorption of plant sterols by some individuals), FDA is considering whether changes to the health claim regulation (§ 101.83 (21 CFR 101.83)), advisory labeling, or other actions are needed to ensure the safe use of plant sterols and stanols (esterified or unesterified) in foods. The agency requests comment on whether the concerns summarized above are material facts and what action, if any, the agency should take to address them. Depending on the comments received and FDA's own evaluation of relevant data, the agency may consider issuing a proposal to amend § 101.83 or initiating a separate rulemaking, as appropriate.

III. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments by November 19, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The interim final rule and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Submit electronic comments to <http://www.fda.gov/dockets/comments>.

IV. References

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

1. Lichtenstein, A. H. and R. J. Deckelbaum for the American Heart Association Nutrition Committee, "Stanol/Sterol Ester-Containing Foods and Blood Cholesterol Levels. A Statement for Healthcare Professionals From the Nutrition Committee of the Council on Nutrition, Physical Activity, and Metabolism of the American Heart Association," *Circulation*, vol. 103, pp. 1177-1179, 2001.
2. Hallikainen, M. A., E. S. Sarkkinen, and M. I. J. Uusitupa, "Plant Stanol Esters Affect Serum Cholesterol Concentrations of Hypercholesterolemic Men and Women in a Dose-Dependent Manner," *Journal of Nutrition*, vol. 130, pp. 767-776, 2000.
3. Commission Decision of July 24, 2000, on "Authorizing the Placing on the Market of 'Yellow Fat Spreads with Added Phytosterol Esters' as a Novel Food Ingredient under Regulation (EC) No 258/97 of the European Parliament and of the Council," *Official Journal L 200*, August 8, 2000, pp. 0059-0060.
4. Australia New Zealand Food Authority (ANZFA), Food Standard Ministers Approve Plant Sterol Esters as a Novel Food Ingredient in Edible Oil Spreads. ANZFA Media Release, June 1, 2001, available at www.anzfa.gov.au.

Dated: September 28, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01-25106 Filed 10-2-01; 5:03 pm]

BILLING CODE 4160-01-S

DEPARTMENT OF THE INTERIOR**Minerals Management Service****30 CFR Part 210 and 218**

RIN 1010-AC86

Solid Minerals Reporting Requirements

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule; correction.

SUMMARY: On August 30, 2001, MMS published a final rule titled "Solid Minerals Reporting Requirements" (66 FR 45760) to implement MMS's reengineered compliance strategy for solid minerals. This document makes minor corrections to that final rule.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Carol P. Shelby, Regulatory Specialist, Regulations and FOIA Team, Minerals Revenue Management, MMS, telephone (303) 231-3151, fax (303) 231-3385, or e-mail Carol.Shelby@mms.gov.

Correction

In Federal Register document 01-21638 published Thursday, August 30, 2001, make the following corrections:

1. On page 45771, in the third column, in § 210.201(c)(3)(i), the post office box number "5760" should read "5810" and the zip code "80217-5760" should read "80217-5810."

2. On page 45773, in the third column, in amendatory instruction 27.b., the words "pursuant to instructions in the 'AFS Payor Handbook—Solid Minerals'" should read "in the 'AFS Payor Handbook—Solid Minerals'."

Dated: September 19, 2001.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 01-24988 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-MW-P

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 920**

(MD-050-FOR)

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is approving an amendment to the Maryland regulatory program (Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment revises the Maryland statutes to require the use of financial disclosure forms by the Land Reclamation Committee. The amendment satisfies a required program amendment at 30 CFR 920.16(l). The amendment is intended to revise the Maryland program to be no less effective than the corresponding Federal regulations.

EFFECTIVE DATE: October 5, 2001.

FOR FURTHER INFORMATION CONTACT:

George Rieger, Manager, Oversight and Inspection Office, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220. Telephone: (412) 937-2153. E-mail: grieger@osmre.gov

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136

SUPPLEMENTARY INFORMATION:

- I. Background on the Maryland Program
- II. Submission of the Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Maryland Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, " * * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * * " and "rules and regulations consistent with regulations issued by the Secretary" pursuant to the Act. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on February 18, 1982. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 18, 1982, **Federal Register** (47 FR 7214). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 920.15 and 920.16.

II. Submission of the Amendment

By an undated letter received by OSM on May 7, 2001 (Administrative Record No. 578-12), Maryland submitted a copy of House Bill 984 as a formal proposed amendment to its program. The House Bill was enacted to require members of the Land Reclamation Committee to file a United States Department of Interior State Employee Statement of Employment and Financial Interests. Maryland submitted the formal amendment to satisfy a required amendment at 30 CFR 920.16(l). We announced the proposed amendment in the June 12, 2001, **Federal Register** (66 FR 31571), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on July 12, 2001. We did not receive any public comments. No one requested an opportunity to speak at a public hearing, so no hearing was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendments to the Maryland permanent regulatory program.

Maryland is adding new paragraph 4. to Section 15-204 of the Annotated Code of the Public General Laws of Maryland, Environment, as follows:

(4) Members of the Land Reclamation Committee shall file a United States Department of Interior State Employee Statement of Employment and Financial Interests.

As a result of this addition, existing paragraph (4) is re-numbered as paragraph (5).

We find that the revision is no less effective than the Federal regulations at 30 CFR 705.11(a) and 705.17(a).

IV. Summary and Disposition of Comments**Federal Agency Comments**

On May 10, 2001, we asked for comments from various Federal agencies who may have an interest in the Maryland amendment (Administrative Record Number MD-578-13). We solicited comments in accordance with section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations. No responses were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to

those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. Therefore OSM did not request EPA's concurrence.

Public Comments

No comments were received in response to our request for public comments.

V. Directors Decision

Based on the findings above we are approving the amendments to the Maryland program. We are also removing the required amendment at 30 CFR 920.16(l). We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. Maryland's program regarding this action is now consistent with the intent of the Federal regulations. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with"

regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- Does not have an annual effect on the economy of \$100 million.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 7, 2001.

Tim L. Dieringer,
Acting Regional Director, Appalachian
Regional Coordinating Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal

Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
May 7, 2001	October 5, 2001	Section 15-204 (4)(5) of the Annotated Code of the Public General Laws of Maryland, Environment.

3. § 920.16 is amended by removing and reserving paragraph (l).
 [FR Doc. 01-25006 Filed 10-4-01; 8:45 am]
 BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA-4139a; FRL-7061-2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_x RACT Determinations for Five Individual Sources Located In the Pittsburgh-Beaver Valley Area; Withdrawal of Direct Final Rule; Republication

Editorial Note: On Thursday, September 27, 2001, this rule document FR Doc. 01-23630 appeared at 66 FR 49292-49293. Due to numerous errors it is being reprinted in its entirety.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Direct final rule.

SUMMARY: Due to receipt of a letter of adverse comment, EPA is withdrawing the direct final rule to approve revisions which establish reasonably available control technology (RACT) requirements for five major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x) located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the direct final rule published on August 21, 2001 (66 FR 43779), EPA stated that if it received adverse comment by September 20, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on August 21, 2001 (66 FR 43822). EPA will not institute a second comment period on this action.

DATES: The Direct final rule is withdrawn as of September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814-2108.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: September 14, 2001.

James W. Newson,
Acting Regional Administrator, Region III.

Accordingly, the addition of § 52.2020(c)(173) is withdrawn as of September 27, 2001.

[FR Doc. 01-23630 Filed 9-26-01; 8:45 am]
 BILLING CODE 6560-50-M

Editorial Note: On Thursday, September 27, 2001, this rule document FR Doc 01-23630 appeared at 66 FR 49292-49293. Due to numerous errors it is being reprinted in its entirety.

[FR Doc. R1-23630 Filed 10-5-01; 8:45 am]
 BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300985A; FRL-6795-8]

RIN 2070-AB78

Fenthion, Methidathion, Naled, Phorate, and Profenofos; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revokes specific tolerances listed in the regulatory text for 67 meat, milk, poultry, and egg (MMPE) tolerances for residues of the organophosphate pesticides fenthion, methidathion, naled, phorate, and profenofos. EPA determined that there are no reasonable

expectations of finite residues in or on meat, milk, poultry, or eggs for the aforementioned organophosphate pesticides and therefore, these tolerances are not necessary. EPA announced on August 2, 1999, that those tolerances were reassessed under the the Federal Food, Drug, and Cosmetic Act (FFDCA). The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the FFDCA. By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. Since those 67 tolerances were previously reassessed, those reassessments were counted at that time. Consequently, no reassessments are counted here toward the August 2002 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective January 3, 2002. Objections and requests for hearings, identified by docket control number OPP-300985A, must be received by EPA on or before December 4, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-300985A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8037; and e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgrstr/>. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-300985A. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI).

This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Background

A. What Action is the Agency Taking?

In this final rule, EPA is revoking the FFDCAs tolerances for residues of the organophosphate pesticides fenthion, methidathion, naled, phorate, and profenofos in or on 67 specific meat, milk, poultry, and egg (MMPE) commodities.

EPA is revoking these 67 tolerances because they are not necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. Based on feeding studies submitted since the time that the tolerances were originally established, the Agency had concluded that there is no reasonable expectation of finite residues in or on meat, milk, poultry, and egg commodities associated with those tolerances for fenthion, methidathion, naled, phorate, and profenofos. These feeding studies used exaggerated amounts of the compound (10x the dietary burden) and did not show measurable residues of the pesticides tested. Because there is no reasonable expectation of finite residues, these 67 tolerances are not required under the FFDCAs and can be revoked. The Agency originally made the determination that there is no reasonable expectation of finite residues of fenthion, methidathion, naled, phorate, or profenofos for the 67 commodities listed below on July 11, 1999. EPA published a notice in the **Federal Register** on August 2, 1999 (64 FR 41933) (FRL-6097-3) that these 67 tolerances were considered as reassessed and have already been counted toward meeting the tolerance reassessment requirements listed in FFDCAs section 408(q).

EPA is not issuing today a final rule to revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above if: (1) Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained, (2) EPA independently verifies that the tolerance is no longer needed, or (3) the tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

In the **Federal Register** of March 31, 2000 (65 FR 17236) (FRL-6497-7), EPA issued a proposed rule to revoke the tolerances listed in this final rule. Also, the March 31, 2000 proposal invited public comment. In response to the document published in the **Federal Register** of March 31, 2000, no comments were received by the Agency.

1. *Fenthion.* EPA is revoking the tolerances in 40 CFR 180.214(a) for residues of fenthion and its cholinesterase-inhibiting metabolites in or on poultry, fat; poultry, meat byproducts (mbypp); and poultry, meat. In 40 CFR 180.214(a), EPA is also removing the "(N)" designation from all entries to conform to current Agency administrative practice ("N" designation means negligible residues).

2. *Methidathion.* EPA is revoking the tolerances for residues of methidathion and its metabolites in or on cattle, fat; cattle, mbypp; cattle, meat; goats, fat; goats, mbypp; goats, meat; hogs, fat; hogs, mbypp; hogs, meat; horses, fat; horses, mbypp; horses, meat; poultry, fat; poultry, mbypp; poultry, meat; sheep, fat; sheep, mbypp; sheep, meat; milk; and eggs by removing 40 CFR 180.298(a)(2) in its entirety. In 40 CFR 180.298, EPA is also redesignating paragraph (a)(1) as paragraph (a) and removing the "(N)" designation from all entries in the table under newly designated paragraph (a) to conform to current Agency administrative practice ("N" designation means negligible residues).

3. *Naled.* EPA is revoking the tolerances in 40 CFR 180.215(a)(1) for residues of naled and its conversion product 2,2-dichlorovinyl dimethyl phosphate in or on cattle, fat; cattle, mbypp; cattle, meat; goats, fat; goats, mbypp; goats, meat; hogs, fat; hogs, mbypp; hogs, meat; horses, fat; horses, mbypp; horses, meat; poultry, fat; poultry, mbypp; poultry, meat; sheep, fat; sheep, mbypp; sheep, meat; milk; and eggs.

4. *Phorate.* EPA is revoking the tolerances in 40 CFR 180.206(a) for combined residues of phorate and its cholinesterase-inhibiting metabolites in or on cattle, fat; cattle, mbypp; cattle,

meat; goats, fat; goats, mby; goats, meat; hogs, fat; hogs, mby; hogs, meat; horses, fat; horses, mby; horses, meat; poultry, fat; poultry, mby; poultry, meat; sheep, fat; sheep, mby; sheep, meat; milk; and eggs.

5. *Profenofos*. Since the proposed rule, § 180.404 was revised and paragraphs (a), (b), (c), and (d) were designated on May 24, 2000 (65 FR 33691) (FRL-6043-1). EPA is revoking the tolerances in 40 CFR 180.404(a) for combined residues of profenofos and its metabolites converted to 4-bromo-2-chlorophenyl in or on poultry, fat; poultry, mby; poultry, meat; and eggs.

B. What is the Agency's Authority for Taking this Action?

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, the Agency gives consideration to possible pesticide residues in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticide residues (40 CFR 180.6). If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, then tolerances do not need to be established for these commodities (40 CFR 180.6(b) and 180.6(c)).

C. When Do These Actions Become Effective?

These actions become effective 90 days following publication of this final rule in the *Federal Register*. EPA has delayed the effectiveness of these revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's actions. Consequently, the effective date is January 3, 2002. For this particular final rule, the actions will affect uses which have been canceled for more than a year.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August 2006. As of September 25, 2001, EPA has reassessed over 3,780 tolerances. In this document, EPA is revoking 67 tolerances and/or exemptions; however, since all were previously counted as reassessed, none are counted here toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a *Federal Register* document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Documents (REDs). EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL-6559-3). This guidance will be made available to interested persons. Electronic copies are available on the internet at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under *Federal Register*—Environmental Documents." You can also go directly to the *Federal Register* listings at <http://www.epa.gov/fedrgstr/>.

IV. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-300985A in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 4, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information 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.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260-4865.

2. *Objection/hearing fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the

waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP-300985A, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408.

The Office of Management and Budget (OMB) has exempted this type of action: i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not

have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the pre-exemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175 requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the

relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 20, 2001.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.206 [Amended]

2. Section 180.206 is amended by removing from the table in paragraph (a) the entries for cattle, fat; cattle, mby; cattle, meat; eggs; goats, fat; goats, mby; goats, meat; hogs, fat; hogs, mby; hogs, meat; horses, fat; horses, mby; horses, meat; milk (negligible residue); poultry, fat; poultry, mby; poultry, meat; sheep, fat; sheep, mby; and sheep, meat.

§ 180.214 [Amended]

3. Section 180.214 is amended by removing from the table in paragraph (a), the entries for poultry, fat; poultry, (mby); and poultry, meat; and by removing the "(N)" designation from the entry "milk" in the table under paragraph (a).

§ 180.215 [Amended]

4. Section 180.215 is amended by removing from the table in paragraph (a)(1), the entries for cattle, fat; cattle, mby; cattle, meat; eggs; goats, fat; goats, mby; goats, meat; hogs, fat; hogs, mby; hogs, meat; horses, fat; horses, mby; horses, meat; milk; poultry, fat; poultry, mby; poultry, meat; sheep, fat; sheep, mby; and sheep, meat.

§ 180.298 [Amended]

5. Section 180.298 is amended by redesignating paragraph (a)(1) as (a), and by removing the "(N)" designation wherever it appears in the "parts per million" column in the table under newly designated paragraph (a) and by removing paragraph (a)(2).

§ 180.404 [Amended]

6. Section 180.404 is amended by removing the entries for poultry, fat; poultry, mby; poultry, meat; and eggs from the table in paragraph (a).

[FR Doc. 01-25020 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-7074-2]

Idaho: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of immediate final rule.

SUMMARY: We are withdrawing the immediate final rule for Idaho: Final Authorization of State Hazardous Waste Management Program Revision published on August 22, 2001, 66 FR 44071, which approved revisions to Idaho's Hazardous Waste Regulations. We stated in the immediate final rule that if we received comments that oppose this authorization, we would publish a timely notice of withdrawal in the **Federal Register**. Subsequently, we received comments that oppose this action. We will address these comments in a subsequent final action based on the proposed rule also published on August 22, 2001, at 66 FR 44107.

DATES: As of October 5, 2001, we withdraw the immediate final rule published on August 22, 2001, 66 FR 44071.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, (206) 553-0256, US EPA Region 10, Mailstop WCM-122, 1201 Sixth Ave, Seattle, Washington 98101.

SUPPLEMENTARY INFORMATION: Because we received comments that oppose this authorization, we are withdrawing the immediate final rule for Idaho: Final Authorization of State Hazardous Waste Management Program Revisions published on August 22, 2001, at 66 FR 44071, which intended to grant authorization for the revisions to Idaho's Hazardous Waste Regulations. We stated in the immediate final rule that if we received comments that opposed this action, we would publish a timely notice of withdrawal in the **Federal Register**. We received comments that opposed this action. We will address all comments in a subsequent final action based on the proposed rule previously published on August 22, 2001, at 66 FR 44107, and will not provide for additional public comment during the final action.

Dated: September 24, 2001.

Charles E. Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 01-24905 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 01-2255]

Change in Board on Contract Appeals

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to reflect a change in the Board of Contract Appeals to which appeals of final decisions regarding procurement contracts will be referred. The Managing Director will refer such appeals to the Armed Services Board of Contract Appeals. Previously, such appeals were referred to the General Services Board of Contract Appeals. Appeals will be handled in accordance with the Rules of the Armed Services Board of Contract Appeals.

DATES: Effective October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Sonna Stampone, Office of the Managing Director, (202) 418-0992.

SUPPLEMENTARY INFORMATION:

1. By this order, we amend 0.231(e) of the Commission's rules, 47 CFR 0.231(e), to reflect the change of Board of Contract Appeals to which contract appeals shall be referred. The Managing Director will refer all appeals of final decisions regarding procurement

contracts to the Armed Services Board of Contract Appeals.

2. Accordingly, pursuant to § 0.231(b) of the Commission's rules, 47 CFR 0.231(b), § 0.231(e) of the Commission's rules, 47 CFR 0.231(e), is *Amended* as rule changes and is effective October 1, 2001.

List of Subjects in 47 CFR Part 0

Organization and functions (Government Agencies).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 0, subpart B, of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

2. Section 0.231 is amended by revising paragraph (e) as follows:

§ 0.231 Authority delegated.

* * * * *

(e) The Managing Director is delegated authority to act as Head of the Procurement Activity and Contracting Officer for the Commission and to designate appropriate subordinate officials to act as Contracting Officers for the Commission. As Head of the Procurement Activity, the Managing Director will refer all appeals filed against final decisions regarding procurement contracts to the Armed Services Board of Contract Appeals for resolution. Appeals will be handled in accordance with the Rules of the Board of Contract Appeals.

* * * * *

[FR Doc. 01-24956 Filed 10-4-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 2

[ET Docket No. 00-47; FCC 01-264]

Software Defined Radios

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document we amend the Commission's rules to create a new

class of equipment for software defined radios (SDRs) with streamlined equipment authorization procedures. We anticipate that software defined radio technology will allow manufacturers to develop reconfigurable transmitters or transceivers that can be multi-service, multi-standard, multi-mode, and multi-band. Specifically, we are amending our equipment authorization rules to permit equipment manufacturers to make changes in the frequency, power and modulation parameters of such radios without the need to file a new equipment authorization application with the Commission. We will also permit electronic labeling so that a third party may modify a radio's technical parameters without having to return it to the manufacturer for re-labeling. These changes will facilitate the deployment and use of this promising new technology, which we believe will facilitate more efficient use of the spectrum.

DATES: Effective February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418-7506.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Report and Order* in ET Docket No. 00-47, FCC 01-264, adopted September 13, 2001, and released September 14, 2001. The full text of this Commission decision is available on the Commission's Internet site at www.fcc.gov. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, Qualex International (202) 863-2893, Room CY-B402, 445 12th Street, S.W. Washington, D.C. 20554.

Summary of the First Report and Order

1. In this *First Report and Order* (FR&O), the Commission amends part 2 of its rules to create a new class of equipment for software defined radios (SDRs) with streamlined equipment authorization procedures. We anticipate that software defined radio technology will allow manufacturers to develop reconfigurable transmitters or transceivers that can be multi-service, multi-standard, multi-mode, and multi-band. Specifically, we are amending our equipment authorization rules to permit equipment manufacturers to make changes in the frequency, power and modulation parameters of such radios without the need to file a new equipment authorization application

with the Commission. We will also permit electronic labeling so that a third party may modify a radio's technical parameters without having to return it to the manufacturer for re-labeling. These changes will facilitate the deployment and use of this promising new technology, which we believe will facilitate more efficient use of the spectrum.

2. In March 2000, the Commission issued a *Notice of Inquiry*, 65 FR 17246, March 31, 2000, seeking information from the public on a number of issues raised by the development of software defined radios. Subsequently, in December 2000, the Commission issued a *Notice of Proposed Rule Making* (NPRM), 66 FR 341, January 3, 2001, that proposed to define software defined radios as a new class of equipment and to simplify the authorization requirements for such equipment.

3. Upon reviewing the record, we conclude that it is desirable to revise our equipment authorization rules to accommodate the flexibility offered by software defined radios. The ability of software defined radios to be reprogrammed to new operating parameters in the field could have far reaching implications for the way the Commission allocates and licenses spectrum and authorizes radio equipment. Software defined radios could allow more efficient use of spectrum by facilitating spectrum sharing and by allowing equipment to be reprogrammed to more efficient modulation types. Their ability to be programmed could also enhance interoperability between different radio services. We find that it is possible to provide this flexibility in a manner that will ensure that software defined radios operate in compliance with the rules for the service in which they will operate. We therefore are adopting a definition of software defined radio and a streamlined procedure for making changes to the operating parameters of software defined radios. We are also adopting rules to permit electronic labeling of software defined radios and to require manufacturers to take steps to prevent unauthorized software modifications. These changes will provide greater flexibility to manufacturers to facilitate the deployment of software defined radios while fulfilling our statutory requirement to protect the public from harmful interference. We will consider additional rule changes in the future as software defined radio technology advances.

Definition of Software Defined Radio

4. The *NPRM* proposed to define a software defined radio, for regulatory purposes, as “* * * a radio that includes a transmitter in which the operating parameters of the transmitter, including the frequency range, modulation type or maximum radiated or conducted output power can be altered by making a change in software without making any hardware changes.” We indicated that this definition was not intended to cover devices that use software simply to control functions such as power or frequency within a range approved by the Commission. Receivers would not be covered under this definition.

5. Based on the comments received, we are adopting the following regulatory definition for software defined radio that requires that at least one of the three operating parameters of frequency, modulation type or output power be software programmable. Our purpose in adopting this expansive definition of software defined radio is to foster development of this promising technology and to enable manufacturers to take advantage of the streamlined equipment authorization process, if they so desire.

Software Defined Radio. A radio that includes a transmitter in which the operating parameters of frequency range, modulation type or maximum output power (either radiated or conducted) can be altered by making a change in software without making any changes to hardware components that affect the radio frequency emissions.

Authorization Requirements

6. The rules currently require most radio transmitters to be approved by the Commission or a designated Telecommunication Certification Body (TCB) before they may be marketed. When changes are made to the operating frequencies, output power, or types of radio frequency emissions of an authorized transmitter, the grantee is required to apply for a new approval and wait until the approval is issued before the equipment may be marketed with the changes.

7. The rules allow two classes of “permissive changes” for authorized equipment without requiring a new approval. Class I permissive changes include modifications that do not degrade the RF emissions from a device at the time of initial certification and do not require any filing with the Commission. Class II permissive changes include modifications other than frequency, modulation or power that degrade the RF emissions from a

device reported at the time of the initial certification. Class II changes are authorized through a streamlined filing procedure that does not require the filing of a complete application form with all exhibits normally required for a new approval. Instead, the applicant simply files a description of the changes and measurement results showing the changed equipment continues to comply with the rules.

8. The transmitter authorization rules were developed at a time when transmitters were hardware based. At that time, changes to the frequency, modulation type, and power output of a transmitter were performed by making changes to the layout and physical components of electronic circuits. Such changes essentially resulted in a new device, so we required a complete new application form with all exhibits and required a new identification number on the device. However, in a software defined radio, changes to these operating parameters can be accomplished through a software change with no change in hardware. Requiring manufacturers to obtain a new approval for equipment when changes are made only to the software is unnecessarily burdensome because a new identification number must be used and the equipment already in the field may have to be recalled for re-labeling by the manufacturer. Therefore, we proposed in the *NPRM* to develop a more streamlined authorization procedure for changes to the operating parameters of software defined radios.

Class III Permissive Change

9. We proposed that any changes in frequency, power, or modulation type of a software defined radio may be authorized as a new class of permissive change, which we proposed to designate as Class III. This would streamline the filing procedure for changes to approved software defined radios and would eliminate the need for a new identification number. We also proposed to require that the applicant for a Class III change submit test data showing that the equipment complies with the applicable requirements for the service(s) or rule parts under which the equipment will operate with the new software. The applicant would have to demonstrate compliance with the applicable RF exposure requirements. The Commission would notify the applicant when a permissive change is granted. Once a Class III permissive change was granted for a software defined radio with changes that affect the operating parameters, the new software could be loaded into units in the field. The record in the

Commission's database for each authorized device would be amended to show the approved frequency range(s), power and modulation type(s) as it does now. Additional frequency ranges or other new technical parameters would be added to the database record for an authorization when a permissive change is granted.

10. We conclude that the proposed Class III change will benefit manufacturers by streamlining the equipment approval process. Manufacturers will no longer need to file a complete application form or much of the information required with a new certification application, which includes photographs, circuit diagrams and a description of the equipment. In addition, permissive changes to existing equipment are processed on a faster track than new certifications. We find that the proposed Class III permissive change strikes the appropriate balance between reducing the regulatory burden on manufacturers and protecting the public from interference and safety hazards from radio equipment. Accordingly, we are adopting the Class III permissive change for software defined radios.

11. We find that self-approval is not appropriate for software defined radios at this time. As we stated in the *NPRM*, equipment is generally placed in the self-approval category after the Commission has gained some assurance that manufacturers can and do produce equipment that complies with the rules. Given the early state of software defined radio technology, some experience with the equipment is necessary before we can determine whether self-approval is appropriate. We expect to re-evaluate the appropriateness of allowing manufacturers' self-approval for software defined radios in a future proceeding.

Identification as a Software Defined Radio

12. The *NPRM* proposed that Class III changes would only be permitted for a transmitter that was identified as a software defined radio in the original application for certification. The purpose of this proposal was to identify which devices would be subject to the new rules.

13. We will require the applicant to identify a software defined radio at the time an original application is filed in order for it to be eligible for Class III permissive changes. This will allow the application reviewer to determine which requirements the equipment must meet, such as the security features and labeling discussed below, and whether the applicant has demonstrated

compliance with them. When applying for a Class III permissive change, the applicant must reference the initial declaration. We decline to establish a mechanism to reclassify previously approved devices as software defined radios. We find that such an approach would unnecessarily complicate the application process. Furthermore, additional supplementary information for existing equipment would have to be filed in any event. We note, however, that this approach would not prohibit the filing of a new request for an authorization as a software defined radio, permitting the device to be subsequently eligible for Class III permissive changes.

Third Party Permissive Changes

14. We proposed to allow only the party holding the grant of equipment authorization for a software defined radio to file for a Class III permissive change. The reason is that the party holding the grant of equipment authorization, which is indicated by the identification number, is responsible for ensuring that equipment complies with the rules. When a permissive change is made, the same identification number is used, indicating that the same party continues to be responsible for compliance with the rules. Allowing other parties to make permissive changes could result in questions of which party is liable if the changed equipment is subsequently found to be non-compliant.

15. We adopt our proposal to allow Class III changes to be requested only by the grantee of equipment authorization to eliminate ambiguities about which party is responsible for the compliance of a device. This approach would not preclude third parties from being able to modify software defined radios in the field. We agree with the comments that it is desirable to provide a means to allow third parties to develop new and innovative software for software defined radios. This can be accomplished in two ways. First, the original grantee may authorize a third party to file an application with the Commission on its behalf as we permit now. The original grantee would continue to be responsible for the continued compliance of the device. The second way is for a third party to obtain a new identification number for a device and become the party responsible for its compliance. The new identification number can be placed on the equipment through electronic labeling as discussed. The rules we are adopting allow any party to install or make changes to application or other software in a radio

that does not affect the authorized operating parameters.

Combined Hardware and Software Changes

16. We proposed to allow Class III permissive changes only for equipment in which no hardware changes have been made from the originally approved device because this would eliminate ambiguity about which hardware and software combinations have been approved. However, the NPRM sought comments on whether we should allow a combination of hardware and software permissive changes in a single device.

17. We will permit combinations of Class III permissive changes and Class I permissive changes to hardware in a single device. Class I changes do not degrade the radio frequency emissions from a device, so allowing such combinations of hardware and software changes should not cause any compliance problems. However, at this time we will not permit Class III changes to be combined with Class II hardware changes that could affect radio frequency emissions. This could cause ambiguity in which combinations of hardware and software are approved in a radio, making enforcement of the rules difficult. Also, as some comments noted, combinations of changes made at different times could have unknown effects on the interference potential and RF safety of a radio. In addition, we question whether a radio in which any hardware changes are necessary to change operating parameters should even be considered a software defined radio. However, we will consider revisiting this issue as the Commission and industry gain greater experience with software defined radios.

Limit on the Number of Hardware and Software Combinations

18. The NPRM sought comment on whether we should limit the number of hardware and software combinations permitted under a single authorization. We noted that some transmitters are tested with multiple antennas to ensure they will comply in every configuration in which they will be used, and that allowing software variations could increase the number of hardware and software combinations existing under a single approval.

19. We agree with the commenting parties who argue that no limit should be placed on the number of hardware and software combinations. Such limits could inhibit common hardware platforms. We have no reason to expect that such a large number of combinations will exist for a particular device that a determination of

compliance would be difficult. We will not permit hardware changes that degrade the operating parameters to be made after the initial approval, which will help limit the number of hardware/software combinations under a single approval. We will continue to monitor this area and revisit this issue in the future if warranted.

Copy of Radio Software

20. The NPRM sought comments on whether there is a need for applicants to submit a copy of radio software to the Commission. Review of software code by the staff would be difficult and time consuming and would not necessarily assist in determining whether a device complies with the rules. We believe that obtaining a copy of the code from an applicant would not be necessary for determining compliance in the great majority of cases. Accordingly, we will not routinely require applicants to supply a copy of the radio software. However, we believe cases may arise wherein the staff may need to examine the software code used in a device as part of determining its compliance. We therefore may require the submission of software code on request.

Filing Fees

21. The NPRM proposed to apply the filing fee for certification of transmitters used in licensed services to the new Class III permissive changes to reflect the staff time required to process these changes. While the filing procedure for permissive changes has been streamlined, Commission staff is still required to perform a technical review of the test data for compliance with the rules. We are therefore adopting the fee we proposed for Class III permissive changes. This fee reflects the expected review time for Class III changes and is the same as we require for approval of transmitters used in licensed services. Where a radio will operate under multiple rule parts, requiring increased review time, we will charge multiple fees as currently set out in the rules.

Software Modifications

22. We tentatively concluded in the NPRM that a means will be necessary to avoid unauthorized modifications to software that could affect the compliance of a radio. Because groups such as the SDR Forum and ETSI are still in the process of developing standards for encryption and digital signatures that could be used in software defined radios, we declined to propose specific requirements for authentication. Instead, we proposed a more general requirement that manufacturers take steps to ensure that

only software that is part of a hardware/software combination approved by the Commission or a TCB can be loaded into a radio. The radio software must not allow users to operate the radio with frequencies, output power, modulation types or other parameters outside of those that were approved. We proposed to allow manufacturers to use any appropriate means to meet these requirements and require them to describe the methods in the application for equipment authorization.

23. We find that a means is necessary to ensure that software changes cannot be made to a radio that will cause it to operate with parameters outside of those that were approved in order to prevent interference to authorized radio services. We decline to set specific security or authentication requirements at this time because they could hinder the development of the technology used to provide such security and could have the potential to be unduly burdensome on manufacturers. We note that industry groups are still in the process of developing security standards. We continue to believe that the best approach is to rely on a general requirement that manufacturers take adequate steps to prevent unauthorized changes to the software that drives their equipment. This will allow manufacturers flexibility to develop innovative software defined transmitting equipment while at the same time providing for oversight of the adequacy of such steps through the equipment authorization process. Accordingly, we are adopting the proposal in the *NPRM* that manufacturers must take steps to prevent unauthorized software changes to a software defined radio. The precise methods of ensuring the integrity of the software in a radio will be left to the manufacturer, and the manufacturer must document the methods in the application for equipment authorization. However, it is possible that we may have to specify more detailed security requirements at a later date as software defined radio technology develops. Our intent is to focus on results that security efforts should achieve rather than the means that must be used. The SDR Forum has indicated that it is continuing to develop methods for the security and authentication of radio software and that it will report its findings to the Commission. We will consider further input from industry and other government agencies in determining whether more detailed security requirements are necessary. We encourage all interested parties to

submit relevant information within one year of adoption of this order.

Labeling

24. A major benefit of software defined radios will be the ability of manufacturers to produce radios intended to be programmed by third parties with unique or specialized software. To help realize this benefit, we proposed an option that would allow software defined radios to be equipped with an "electronic label" to display the FCC identification number by means of a light emitting diode (LED) display, a liquid crystal display (LCD) or other similar method. This would provide a method to re-label equipment in the field if a new approval were obtained by a third party for a previously approved device.

Need for Electronic Labeling

25. We will permit electronic labeling for software defined radios as proposed. This option will avoid the need for physical re-labeling of equipment when a party other than the original grantee makes changes to the radio software. We do not agree with Clearwire's proposal to require only a single identification number on each device. As we stated, the FCC identification number is the indicator of which party is responsible for the compliance of a device and we have determined that only the original grantee may make changes to the operating parameters under the original identification number. At this time, we are only permitting electronic labeling for software defined radios.

Type of Display

26. Several parties believe that we should allow means other than an LED or LCD screen for displaying the labeling information. We are limiting electronic labeling to software defined radios with an LED, LCD or similar display device at this time because it would be significantly more difficult to an investigator or user to obtain the label information through a remote terminal or other device. As proposed, we are requiring that the electronic label be readily accessible, which could include, for example, a menu option or a hotkey. Additionally, the user manual must include information on how to access the electronic label. We are not requiring that the electronic labeling be visible when the power, such as the battery pack, is removed from the device. This would burden manufacturers by requiring them to install a backup battery and possibly additional switches and circuitry to display the identification information.

Information To Be Displayed

27. Cingular believes that electronic labels should display the FCC identification number, and that the display should change automatically based upon the hardware and software installed. The SDR Forum believes that nothing about the required identification information should change, other than the means of display. NTIA believes that all the information currently required on the label could be made available on the user display screen. NTIA also wants the Commission to make clear what other information must be included on the electronic label, such as the authorized emissions or other regulated radio parameters.

28. We agree with Cingular and will only require that the FCC identification number(s) associated with the software running in the radio be displayed on the electronic label. The other information that NTIA suggested including on the label is already in the Commission's database under the FCC identification number. The database is available to the public through our Internet site, so we do not believe it is not necessary to require information on the operating parameters on the electronic label. Manufacturers may design their equipment to display any additional information they wish beyond what we require.

Other Matters

1. Testing

29. We tentatively concluded in the *NPRM* that software defined radio technology has not matured to the point where it is possible to predict the radio frequency characteristics of a radio from either the hardware or software alone. Therefore, we proposed that each combination of hardware and software that a radio supports should be tested because it is the only way to ensure that equipment complies with the technical standards in our rules to prevent interference and to protect users from excessive RF radiation. We anticipated that testing each hardware/software combination that will be used in a software defined radio would be no more burdensome than testing each mode in which a radio operates, which is the existing process.

30. As proposed, we will require that software defined radios be tested for compliance with each software application under which the radio will operate. Except as provided below, where the hardware portion of the software defined radio can support multiple software applications, we will not require that the device be tested

with combinations of software. We find no reason to believe that the presence of additional compliant software applications in the radio would affect the radio's performance or raise additional compliance issues. Where the radio is capable of operating with multiple software applications simultaneously, that is, the software defined radio can transmit simultaneously multiple signals or in multiple frequency bands, we will require that the radio be tested to ensure that the device complies with all applicable rules. For this case, we believe that additional testing is needed. For example, software defined radios that enable multiple simultaneous carriers could raise compliance issues with RF safety limits because the total output power would be increased or could produce intermodulation products that would result in emissions higher than those permitted under the rules. We anticipate that a relatively small number of software defined radios will have this capability to transmit multiple signals. We believe that this approach reasonably balances our need to ensure that devices comply with our rules and do not cause interference with the concerns expressed by some parties regarding burdensome testing requirements.

Certification by Telecommunication Certification Bodies (TCBs)

31. In General Docket 98-68, 64 FR 04984, February 2, 1999, we established the requirements for TCBs that are allowed to approve equipment in the same manner as the Commission. In that proceeding, we stated that while we intended to use TCBs to certify a broad range of equipment, we found that certain functions should continue to be performed by the Commission. The functions included certifying new or unique equipment for which the rules or requirements do not exist or for which the application of the rules is not clear. Because software defined radios are a new technology and many questions about the application of the rules may arise, we tentatively concluded in the *NPRM* that TCBs should not be permitted to certify software defined radios or approve permissive changes to software defined radios for at least six months after the effective date of final rules adopted in this proceeding.

32. We believe that six months is a reasonable minimum time period to allow the Commission to gain experience with software defined radios and determine whether TCBs should be permitted to certify them. As the *SDR Forum* noted, we proposed six months only as a marker for reassessment and

may extend the time period if necessary. Accordingly, TCBs will not be permitted to certify software defined radios until at least six months after the effective date of the rules adopted in this proceeding. The Chief of the Office of Engineering and Technology acting under the existing delegated authority will determine when TCBs may certify software defined radios and will announce this decision by public notice.

Enforcement

33. We recognized in the *NPRM* that a non-compliant software defined radio has the potential to interfere with other radio services due to its potential to operate in multiple frequency bands. We requested comments on whether we should enhance our enforcement capabilities due to the development of software defined radios and what particular changes we should make.

34. We are not planning to increase our enforcement capabilities specifically for software defined radios because we have no reason at this time to expect significant compliance problems. However, we note that more of the routine application processing that has previously been handled by the Commission is now being performed by TCBs. This shifting of the workload will free up resources at our Laboratory that can be used to increase post-market surveillance on all types of equipment, including software defined radios. We cannot increase the maximum fines that may be issued for non-compliant equipment because they are limited by statute. We will carefully assess the deployment of software defined radios in the market to determine whether any increased enforcement efforts are warranted and, if appropriate, whether other actions such as a faster revocation procedure for the authorizations of non-compliant software defined radios may be necessary.

Final Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making, Authorization and Use of Software Defined Radios*.² The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. This

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See *Authorization and Use of Software Defined Radios, Notice of Proposed Rule Making, ET Docket 00-47, 15 FCC Rcd 24442, 24462 (2000).*

present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the First Report and Order

36. We are adopting changes to our equipment authorization rules in this Order to facilitate the deployment of software defined radios. The rule changes will streamline the equipment approval process and reduce the burden on applicants by eliminating the need to file a complete new application and physically re-label equipment when changes are made to the frequency, modulation type or output power of a software defined radio. In a software defined radio, functions that were carried out by hardware in the past are performed by software. This means that the operating parameters of the radio, such as the frequency and type of modulation, could be readily changed in the field. The rules previously required a complete new application and a new identification number on a permanently affixed label when changes to these operating parameters were made. The previous requirements could have discouraged the deployment of software defined radios to consumers.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

37. No comments were submitted directly in response to the IRFA. In addition, we have carefully examined all comments filed in response to the Notice and have determined that none specifically address the effect of the proposed rules on small entities.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

38. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, herein adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ A small business concern

³ See 5 U.S.C. 604.

⁴ 5 U.S.C. 603(b)(3).

⁵ Id. 601(6).

⁶ 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after

is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷

39. The Commission has not developed a definition of small entities specifically applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment." According to the SBA's regulation, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business.⁸ Census Bureau data indicates that there are 858 companies in the United States that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.⁹ We believe that many of the companies that manufacture RF equipment may qualify as small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

40. We are establishing a new class of "permissive change" for software defined radios when changes are made to the software that affect the frequency, power or type of modulation. This class of change will require the manufacturer to submit a description of the software changes to the FCC or a designated Telecommunications Certification Body (TCB). The manufacturer will also be required to submit test data showing that the radio complies with the technical standards in our rules with the new software loaded. The new software cannot be loaded into radios until the FCC or TCB notifies the manufacturer that the changes are acceptable. The original FCC identification number for the equipment can continue to be used, so no re-labeling is required.¹⁰

41. We are also allowing an "electronic label" to be used on software defined radio transmitters as an alternative to the permanently affixed label the rules require for other types of devices. The equipment can

display the FCC identification number by means of a liquid crystal display or similar screen.¹¹

42. We are requiring manufacturers to take steps to ensure that only software that has been approved by the FCC or a TCB can be loaded into a transmitter. The software must not allow the user to operate the transmitter with frequencies, output power, modulation types or other parameters outside of those that were approved. Manufacturers may use authentication codes or any other means to meet these requirements, and must describe the methods in their application for equipment authorization.¹²

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

43. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹³

44. The rules adopted in this proceeding apply equally to all entities, including small entities. The rules streamline the approval process for changes to the operating parameters of software defined radios and give additional flexibility to manufacturers by permitting equipment to be labeled electronically instead of with a physical label. The benefits of these streamlined rules are granted to all entities in the same way, including small entities. There is no adverse impact on any entities large or small.¹⁴

45. A significant alternative we considered but rejected, which if adopted might have slightly reduced the burden on small entities, is to allow software changes to be approved under the Declaration of Conformity (DoC) procedure. DoC is a self-approval procedure in which the manufacturer has the equipment tested for compliance at an accredited laboratory. Once the equipment has been found to comply, it

may be marketed without any approval from the FCC or a TCB. Although this alternative might have reduced the burden on small entities, we declined to adopt it because we believe that software defined radio transmitters require a higher level of oversight to ensure that they comply with the rules to prevent interference and protect users from excessive RF radiation. Certain radio transmitters are already permitted to be self-approved, and we are not making any change in the authorization requirements for them.

46. Even though the rules adopted in this *First Report and Order* affect all entities, including small entities, equally and confer the same benefits upon all entities, including small entities, we note that software defined radio is an evolving technology. If issues particularly involving smaller entities arise, these will be examined when we revisit this area in future proceedings. On careful reflection, we note that no commenter stated that any rule adopted herein impacts small entities in a manner different from larger entities.

47. Report to Congress: The Commission will send a copy of the *First Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *First Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

48. Parts 1 and 2 of the Commission's Rules and Regulations are amended, February 4, 2002. Authority for issuance of this *First Report and Order* is contained in Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304, 307 and 332(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304, 307 and 332(b).

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 2

Communications equipment, Radio.
Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rules Changes

For the reasons discussed in parts 1 and 2 of title 47 of the Code of Federal Regulations are amended as follows:

opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*." 5 U.S.C. 601(3).

⁷ Small Business Act, 15 U.S.C. 632 (1996).

⁸ See 13 CFR 121.201, Standard Industrial Classification (SIC) Code 3663.

⁹ See U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC category 3663.

¹⁰ See Order at ¶ 14.

¹¹ See Order at ¶ 35.

¹² See Order at ¶ 32.

¹³ See 5 U.S.C. 603(c).

¹⁴ This proceeding, therefore, may also be "certified" under the RFA. See 5 U.S.C. 605(b).

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309.

2. Section 1.1103 is amended by adding a new entry to the table to read as follows:

§ 1.1103 Schedule of charges for equipment approval, experimental radio services, and international telecommunications settlements.

Action	FCC Form No.	Fee amount	Payment type code	Address
1. Certification:				
f. Class III permissive changes	Electronic 731 & Electronic or Paper 159.	495	ECC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251-5315.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

4. Section 2.1 is amended by adding the following definition in alphabetical order to read as follows:

§ 2.1 Terms and definitions.

* * * * *

(c) * * *

Software defined radio. A radio that includes a transmitter in which the operating parameters of frequency range, modulation type or maximum output power (either radiated or conducted) can be altered by making a change in software without making any changes to hardware components that affect the radio frequency emissions.

* * * * *

5. Section 2.925 is amended by redesignating paragraphs (e) and (f) as (f) and (g), respectively, and by adding a new paragraph (e) to read as follows:

§ 2.925 Identification of equipment.

* * * * *

(e) A software defined radio may be equipped with a means such as a user display screen to display the FCC identification number normally contained in the nameplate or label. The information must be readily accessible, and the user manual must describe how to access the electronic display.

* * * * *

6. Section 2.932 is amended by adding paragraph (e) to read as follows:

§ 2.932 Modification of equipment.

* * * * *

(e) Manufacturers must take steps to ensure that only software that has been

approved with a software defined radio can be loaded into such a radio. The software must not allow the user to operate the transmitter with frequencies, output power, modulation types or other parameters outside of those that were approved. Manufacturers may use authentication codes or any other means to meet these requirements, and must describe the methods in their application for equipment authorization.

7. Section 2.944 is added to read as follows:

§ 2.944 Submission of radio software.

The grantee or other party responsible for compliance of a software defined radio, or the applicant for authorization of a software defined radio shall submit a copy of the software that controls the radio frequency operating parameters upon request by the Commission. Failure to comply with such a request within 14 days or such additional time as the Commission may allow may be cause for denial of authorization, forfeiture pursuant to § 1.80 of this chapter, or other administrative sanctions.

8. Section 2.1043 is amended by revising paragraphs (a) and (b) to read as follows:

§ 2.1043 Changes in certificated equipment.

(a) Except as provided in paragraph (b)(3) of this section, changes to the basic frequency determining and stabilizing circuitry (including clock or data rates), frequency multiplication stages, basic modulator circuit or maximum power or field strength ratings shall not be performed without application for and authorization of a new grant of certification. Variations in electrical or mechanical construction, other than these indicated items, are permitted provided the variations either

do not affect the characteristics required to be reported to the Commission or the variations are made in compliance with the other provisions of this section. Changes to the software installed in a transmitter that do not affect the radio frequency emissions do not require a filing with the Commission and may be made by parties other than the holder of the grant of certification.

(b) Three classes of permissive changes may be made in certificated equipment without requiring a new application for and grant of certification. None of the classes of changes shall result in a change in identification.

(1) A Class I permissive change includes those modifications in the equipment which do not degrade the characteristics reported by the manufacturer and accepted by the Commission when certification is granted. No filing with the Commission is required for a Class I permissive change.

(2) A Class II permissive change includes those modifications which degrade the performance characteristics as reported to the Commission at the time of the initial certification. Such degraded performance must still meet the minimum requirements of the applicable rules. When a Class II permissive change is made by the grantee, the grantee shall supply the Commission with complete information and the results of tests of the characteristics affected by such change. The modified equipment shall not be marketed under the existing grant of certification prior to acknowledgement by the Commission that the change is acceptable.

(3) A Class III permissive change includes modifications to the software of a software defined radio transmitter that change the frequency, modulation type, output power or maximum field

strength outside the parameters previously approved. When a Class III permissive change is made, the grantee shall supply the Commission with a description of the changes and test results showing that the equipment complies with the applicable rules with the new software loaded, including compliance with the applicable RF exposure requirements. The modified software shall not be loaded into equipment, and the equipment shall not be marketed with the modified software under the existing grant of certification, prior to acknowledgement by the Commission that the change is acceptable. A copy of the software shall be submitted to the Commission upon request. Class III changes are permitted only for equipment in which no Class II changes have been made from the originally approved device.

Note to paragraph (b)(3): Any software change that degrades spurious and out-of-band emissions previously reported to the Commission at the time of initial certification would be considered a change in frequency or modulation and would require a Class III permissive change or new equipment authorization application.

(4) Class I and Class II permissive changes may only be made by the holder of the grant of certification, except as specified below.

* * * * *

[FR Doc. 01-24953 Filed 10-4-01; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 24, and 64

[CC Docket No. 97-213; FCC 01-265]

Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: In this document, we grant in part the relief requested by the Cellular Telecommunications & Internet Association ("CTIA"). As requested by CTIA, we are temporarily suspending the September 30, 2001, compliance date for wireline, cellular, and broadband Personal Communications Services ("PCS") carriers to implement two Department of Justice ("DoJ")/Federal Bureau of Investigation ("FBI") "punch list" electronic surveillance capabilities. We deny CTIA's request for a blanket extension of the September 30, 2001, compliance deadline for these carriers to implement a packet-mode

communications electronic surveillance capability. However, given the imminence of the packet-mode compliance deadline, we grant these carriers until November 19, 2001 either to come into compliance or to seek individual relief.

DATES: The September 30, 2001, packet-mode communications compliance date for wireline, cellular, and broadband Personal Communications Services ("PCS") is extended until November 19, 2001. The punch list compliance deadline is temporarily suspended pending the Commission's final action on a decision by the United States Court of Appeals for the District of Columbia Circuit ("Court Remand Decision") that vacated four additional punch list capabilities that had been required by the Commission's Third Report and Order ("Third R&O") in this proceeding.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418-2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, CC Docket No. 97-213, FCC 01-265, adopted September 18, 2001, and released September 21, 2001. The full text of this Commission decision is available on the Commission's Internet site at www.fcc.gov. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, Qualex International, (202) 863-2893, Room CY-B402, 445 12th Street, SW., Washington, DC 20554. Comments may be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>, or by e-mail to ecfs@fcc.gov.

Summary of the Order

1. In the Third R&O, released in August 1999, 65 FR 51710, September 24, 1999, the Commission specified technical requirements for wireline, cellular, and broadband PCS carriers to comply with the assistance capability requirements prescribed by the Communications Assistance for Law Enforcement Act of 1994 ("CALEA"). We took this action under Section 107(b) of CALEA in response to petitions filed with us that claimed that industry standards for electronic surveillance failed to satisfy the four general assistance capability requirements in Section 103 of CALEA. Under Section 107(a)(2) of CALEA (the "safe harbor" provision), carriers and manufacturers that comply with industry standards for electronic surveillance are deemed in compliance

with their specific responsibilities under Sections 103 and 106 of CALEA. The Commission is authorized, under Section 107(b) of CALEA, in response to a petition from any Government agency or person, to establish, by rule, technical requirements or standards if industry associations or standard-setting organizations fail to issue technical requirements or standards or if any Government agency or person believes that such requirements or standards are deficient.

2. In the Third R&O, we required that wireline, cellular, and broadband PCS carriers implement all electronic surveillance capabilities of the industry interim standard, J-STD-025—including two contested features of the interim standard, *i.e.*, a packet-mode communications capability and a location information requirement—and six of nine additional capabilities requested by DoJ/FBI, known as the "punch list" capabilities. While we required a packet-mode capability, we did not adopt specific technical requirements for packet-mode communications. Rather, we permitted carriers to deliver packet-mode data to be delivered to law enforcement agencies ("LEAs") under the interim standard pending further study of packet-mode communications by the telecommunications industry. We required that the capabilities covered by the "core" interim standard—including all uncontested requirements of J-STD-025, as well as the contested location information requirement—be implemented by June 30, 2000, and that the packet-mode and punch list capabilities be implemented by September 30, 2001.

3. Several parties challenged in the United States Court of Appeals for the District of Columbia Circuit six capabilities required by the Third R&O: location information and packet-mode communications, both of which were included in J-STD-025; and dialed digit extraction, party hold/join/drop, subject-initiated dialing and signaling, and in-band and out-of-band signaling, which are four of the six punch list capabilities requested by DoJ/FBI that we added to J-STD-025. In August 2000, the Court vacated and remanded to us for further proceedings those portions of the Third R&O pertaining to the four challenged punch list capabilities. The Court upheld our findings in the Third R&O regarding location information and packet-mode communications, but with respect to the latter stated: "CALEA authorizes neither the Commission nor the telecommunications industry to modify either the evidentiary standards or

procedural safeguards for securing legal authorization to obtain packets from which call content has not been stripped, nor may the Commission require carriers to provide the government with information that is "not authorized to be intercepted."

4. Following the Court Remand Decision, CTIA filed a petition to immediately suspend the September 30, 2001 compliance deadline for implementing the two unchallenged punch list capabilities—content of subject-initiated conference calls and timing information—and the packet-mode communications capability. In its petition, CTIA states that the compliance deadline for those capabilities should be suspended to ensure an orderly and cost-efficient implementation of the punch list and packet-mode communications capabilities. With respect to the punch list, CTIA argues that disentangling the four vacated capabilities from the two remaining capabilities would be a complex and inefficient process. CTIA therefore recommends that we suspend the compliance date for the entire punch list pending resolution of what capabilities are required. With respect to packet-mode communications, CTIA argues that the Court found that telecommunications carriers could not lawfully deliver the full content of a packet to a LEA under a "pen register" order. CTIA further argues that we may receive petitions that request that we declare the current packet-mode standard deficient because it fails to protect the privacy of communications not authorized to be intercepted. Accordingly, CTIA argues that it would be prudent for us to suspend the packet-mode compliance deadline until we have all of the information necessary to make a realistic compliance determination.

5. On September 1, 2000, our Office of Engineering and Technology ("OET") placed the CTIA Petition on Public Notice and on September 15, 2000, OET received comments responding to the CTIA Petition. The great majority of commenting parties support grant of the Petition; however, DoJ/FBI oppose any extension of the packet-mode compliance deadline.

6. In April 2000, we issued a Public Notice providing instructions for those carriers needing to file petitions for extension of the June 30, 2000 deadline for complying with the capability requirements of CALEA section 103. In that Public Notice, we noted that section 107(c)(3) authorizes us to extend the compliance deadline for no longer than two years from the date of the petition's grant. We also noted that the FBI has

provided each carrier an opportunity to participate in a "Flexible Deployment Program," under which the FBI has agreed to review a carrier's extension request in light of the priorities of LEAs. We further noted that, for carriers serving geographic areas that do not have a history of demand by LEAs for electronic surveillance, the FBI may advise us that extensions of the section 103 compliance deadline do not unduly threaten the public safety. Accordingly, we urged each carrier seeking an extension of the June 30, 2000 CALEA deadline to participate in the Flexible Deployment Program before submitting to us a section 107(c) petition for extension of time to comply. A number of carriers chose to participate in the Flexible Deployment Program, and we have made preliminary determinations to suspend the June 30, 2000 deadline for many of those carriers. On August 15, 2001, our Common Carrier Bureau released an Order making final determinations to grant extensions of the June 30, 2000, deadline to several hundred wireline carriers. We anticipate making final determinations on other wireline—as well as wireless—carriers' requests for extensions of that deadline in the near future. We also note that in August 2001 the FBI released a Second Edition of its Flexible Deployment Program. This Second Edition pertains to packet-mode communications and is designed to assist carriers in meeting packet-mode requirements mandated by CALEA.

7. There is broad agreement among industry and law enforcement that we should suspend the September 30, 2001 compliance deadline for the two unchallenged punch list capabilities, pending a final action by the Commission of what punch list capabilities will be required. We agree with the majority of commenters that retaining the current deadline for two of the punch list capabilities prior to determining the disposition of the four punch list capabilities vacated by the Court Remand Decision could result in major inefficiencies for carriers. Moreover, there is insufficient corresponding benefit in implementing these two capabilities by themselves to warrant disruption and costs such a severable implementation would entail. Most carriers use more than one type of switch in their networks, often from different manufacturers. Most manufacturers have developed a CALEA solution that includes all six punch list capabilities that the Third R&O required; some manufacturers have included the core interim standard and the punch list capabilities in one

software package, others have separated the core interim standard and punch list capabilities into different software packages. Some software packages allow each punch list capability to be toggled, while other software packages do not allow toggling. In either case, carriers have to install and test the full software package. Carriers will have to test software with toggling functions to ensure that toggling off some capabilities does not interfere with the provision of other capabilities. For those software packages that do not allow toggling, carriers would have to implement the whole software package by the current September 30, 2001 deadline, absent an extension from the Commission, if the software could not be modified before then either to remove the four vacated punch list capabilities or to provide a toggle on/off function. While we believe that LEAs will cooperate with carriers to minimize the burden on carriers, we find, under these circumstances, such an approach to be inherently burdensome and inefficient. Furthermore, a temporary suspension of the compliance date for the unchallenged capabilities will ensure that all punch list capabilities that may ultimately be required will proceed on the same compliance schedule. In any event, we anticipate that we would likely receive and grant many individual petitions for extension, which would be an unwarranted exercise and expenditure of resources. While we encourage carriers to make available to LEAs any surveillance capability they have available, we recognize that the deployment of software with the punch list capabilities will vary from carrier to carrier.

8. Accordingly, pursuant to our authority to provide a reasonable time and conditions for compliance with and the transition to any new standard, we are temporarily suspending the current September 30, 2001, deadline for all punch list capabilities, including the two unchallenged punch list capabilities (i.e., subject-initiated conference calls and timing information), pending the Commission's final action on the Court Remand Decision. We anticipate that we will establish a new compliance date for all required punch list capabilities in time to allow carriers to be fully CALEA-compliant no later than June 30, 2002. We arrive at this outside target date because we intend to address the Court Remand Decision no later than year's end. We intend to act as expeditiously as possible on the remand, before year's end if possible, believing it to be a priority of this agency. The record

indicates that carriers can implement any required changes to their software within six months of our decision.

9. With regard to a packet-mode communications electronic surveillance capability, we find no need to extend the September 30, 2001, compliance deadline in the blanket manner requested by CTIA. While we deny CTIA's section 107(c) petition for a blanket extension for the reasons stated above, we believe that the record supports a brief extension in order to allow carriers additional time for compliance with and transition to the packet-mode standards. Given the imminence of the September 30, 2001 deadline, we believe that a brief extension is necessary to allow carriers additional time to upgrade their systems to incorporate the packet-mode capability or to allow any carriers wishing to avail themselves of the section 107(c) petition procedure a reasonable amount of time to prepare their petitions, including the technical justification required therein. Briefly extending the deadline will also provide any carriers that wish to voluntarily participate in the FBI's Flexible Deployment Program with respect to packet-mode communications the time necessary to prepare the documentation, including technical data relating to the carrier's system, as required under the program and allow Commission staff to announce the section 107(c) filing procedures with respect to packet-mode communications. Accordingly, pursuant to our authority under section 107(b)(5) of CALEA and sections 4(i) and (j) of the Communications Act, we grant, *sua sponte*, an extension until November 19, 2001, for wireline, cellular, and broadband PCS carriers to implement a packet-mode capability. We view this brief extension as extraordinary relief necessary in the interests of fairness and reasonableness and do not expect to grant any further extensions on an industry-wide basis with respect to packet-mode communications. We therefore encourage any carriers unable to meet the November 19, 2001 deadline to seek individual relief under the section 107(c) procedures. In this regard, we direct the Common Carrier Bureau and the Wireless Telecommunications Bureau to release a Public Notice further explaining the section 107(c) petitioning process with respect to packet-mode communications.

10. Pursuant to sections 1, 4, 229, 301, 303, and 332 of the Communications Act of 1934, as amended, and section 107(b) of the Communications Assistance for Law Enforcement Act, 47 U.S.C. 151, 154, 229, 301, 303, 332, and

1006(b), the Petition to Suspend Compliance Date, filed August 23, 2000 by CTIA, is *Granted in part and denied in part*.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01-24955 Filed 10-4-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 01-233; MM Docket No. 95-88; RM-8641; RM-8688; RM-8689]

Radio Broadcasting Services; Rose Hill, Trenton, Aurora, and Ocracoke, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule, denial.

SUMMARY: This document denies an Application for Review filed by Connor Media Corporation directed to the *Report and Order* in this proceeding. See 61 FR 66618, published December 18, 1996. Specifically, that action allotted Channel 283A to Aurora, North Carolina. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418-2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 95-88, adopted August 13, 2001, and released August 17, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01-24954 Filed 10-4-01; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018-AH72

Import of Polar Bear Trophies From Canada: Change in the Finding for the M'Clintock Channel Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Affirmation of emergency interim rule as final rule.

SUMMARY: The Fish and Wildlife Service is adopting the emergency interim rule published on January 10, 2001, as a final rule without substantive change. This rule amended our regulations, under the Marine Mammal Protection Act (MMPA), on the import of polar bears (*Ursus maritimus*) taken by sport hunters in the M'Clintock Channel population, Nunavut Territory, Canada. Current information indicates that this population has severely declined and harvest quotas have not ensured a sustainable population level. In the emergency interim rule, we found that the M'Clintock Channel population no longer meets the import requirements of the MMPA and amended our regulations to reflect that bears sport hunted in this population after the 1999/2000 Canadian hunting season will no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons. In addition, the emergency interim rule updated our regulations to reflect the formation of the new territory of Nunavut and notified the public on the lifting by Canada of the harvest moratorium in the Viscount Melville Sound polar bear population. This final rule presents the best available information on the M'Clintock Channel population and addresses comments received on the emergency interim rule.

DATES: This final rule is effective on January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Teiko Saito, Chief, Division of Management Authority, Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; telephone (703) 358-2093; fax (703) 358-2280; e-mail fw9ia_dma@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The 1994 amendments to the MMPA (section 104(c)(5)(A)) allow for the issuance of permits to import sport-hunted polar bear trophies from Canada

when we can make certain legal and biological findings. On February 18, 1997, we published regulations in the *Federal Register* (62 FR 7302) that established standards for the issuance of permits to allow the import of sport-hunted polar bear trophies (50 CFR 18.30). The regulations contain aggregate findings applicable for multiple harvest seasons for five populations, including M'Clintock Channel, as follows: (a) Canada has a sport-hunting program that allows us to determine before import that each polar bear was legally taken; (b) Canada has a monitored and enforced program that is consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears; (c) Canada has a sport-hunting program that is based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level for certain populations; and (d) the export of sport-hunted trophies from Canada and their subsequent import into the United States would be consistent with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and would not likely contribute to illegal trade of bear parts. In a subsequent final rule on January 11, 1999 (64 FR 1529), we made aggregate findings that approved two additional populations.

In Canada, management of polar bears has been delegated to the provinces and territories. However, the Canadian Wildlife Service (CWS), Canada's national wildlife agency, maintains an active research program and is involved in the management of populations that are shared between jurisdictions, particularly between Canada and other nations. In addition, Native Land Claims have resulted in co-management boards for most of Canada's polar bear populations. The Nunavut Wildlife Management Board (NWMB) is the main instrument of wildlife management in the Nunavut Settlement Area, while the Government of Nunavut (GNUN), through the Minister of Sustainable Development, retains the ultimate responsibility for both the conservation of wildlife and economic development in the Nunavut Territory. The co-management of Nunavut's polar bear populations also includes the CWS, regional wildlife organizations, and hunters and trappers organizations. The Federal/Provincial/Territorial Polar Bear Technical Committee (PBTC) and Polar Bear Administrative Committee meet annually to ensure a coordinated management process among these parties.

The basis of the Government of Northwest Territories (GNWT) and GNUN polar bear management program is that the human-caused killing of polar bears (e.g., harvest, defense, or incidental) must remain within the sustainable yield, with the anticipation of slow growth for any population. The program has several components including: (a) Use of scientific studies to determine and monitor changes in population size and establish population boundaries; (b) involvement of the resource users and incorporation of traditional knowledge to enrich and complement scientific studies; (c) harvest data collection and a license tracking system; and (d) enforcement measures through regulations and management agreements.

Regulations and management agreements between the GNWT, GNUN, and Native Land Claim beneficiaries provide the rules for polar bear harvest in the Northwest Territories (NWT) and Nunavut. The hunting season opens August 1 and closes May 31 the following year. Except for defense kills, no harvest usually occurs before February. The hunting season is limited by factors such as the lack of sea ice, the number of daylight hours, and winter weather conditions. Sport hunts are typically conducted in the spring, between March and May. Sport hunting of polar bears is presently legal only in NWT and Nunavut and includes additional requirements. All sport hunts must be conducted under Canadian jurisdiction and be guided by a Native hunter. In addition, transportation during the hunt must be by dog sled, the tags must come from the community quota, and quota tags from unsuccessful sport hunts may not be used again. All bears taken by sport hunters must be accounted for within existing quota tags. Not all communities participate in sport hunting as it reduces hunting opportunities for local hunters. You should refer to the February 18, 1997 (62 FR 7302), and January 11, 1999 (64 FR 1529), rules for more extensive information on Canada's polar bear management program.

In an emergency interim rule effective and published in the *Federal Register* on January 10, 2001 (66 FR 1901), we amended our regulations under the MMPA in 50 CFR 18.30 on the import of polar bears taken by sport hunters in the M'Clintock Channel population, Nunavut, Canada. Under the Administrative Procedure Act (5 U.S.C. 551-553), our normal practice is to publish regulations with a 30-day delay in effective date. But in this case, we used the "good cause" exemptions under 5 U.S.C. 553(b) and (d)(3) to issue

the emergency interim rule without first invoking the usual notice and public comment procedure and to make the rule effective upon publication for the following reasons: (1) Official information submitted by the government of Canada showed that the M'Clintock Channel population no longer meets the import requirements of the MMPA; (2) as a matter of fairness to the regulated community, it was necessary to put the public on notice immediately that bears sport hunted in the M'Clintock Channel population after May 31, 2000, would no longer be eligible for import under the finding which approved this population for multiple harvest seasons; and (3) it would be contrary to the public interest to maintain regulatory findings that purport to allow the import of these polar bear trophies when those findings are no longer consistent with the MMPA.

We are adopting the emergency interim rule as a final rule without substantive change. In the emergency interim rule, we found that the M'Clintock Channel population no longer meets the import requirements of the MMPA and amended our regulations to reflect that bears sport hunted in this population after May 31, 2000, the end of the 1999/2000 Canadian hunting season, will no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons. In addition, the emergency interim rule updated our regulations to reflect the formation of the new territory of Nunavut and notified the public on the lifting by Canada of the harvest moratorium in the Viscount Melville Sound polar bear population.

The use of an emergency interim rule allowed us to take action based on the new information for the M'Clintock Channel population, quickly inform the public about the change to the regulations, and, at the same time, ask for comments from the public. We received comments on the emergency interim rule from the CWS, Conservation Force, Safari Club International (SCI), and the Humane Society of the U.S. (HSUS). We received submissions from the Department of Sustainable Development, GNUN, and the NWMB after the close of the comment period, and this information is presented in the preamble of this final rule because it clarifies historical information, population analysis, and current management of the M'Clintock Channel polar bear population. However, we note that, although the information was important in giving an accurate description of polar bear status

and management in Nunavut, it did not affect the outcome of the final rule. Finally, comments were also provided by the Marine Mammal Commission (MMC) and its Committee of Scientific Advisors, as part of the consultative process required by the MMPA. Our summary and response to public comments are given in the sections in the preamble that discuss the issues.

What Is the Status of the M'Clintock Channel Polar Bear Population?

As described in our February 18, 1997 (62 FR 7302), final rule, Canada estimated the M'Clintock Channel population in the mid-1970s to be 900 polar bears based on a 6-year mark-recapture population study. According to the GNUN, this study was part of the first Territorial Government polar bear population inventory conducted in the Central Arctic. The existing mark-recapture population analysis models at that time were based on simplifying assumptions and did not have the benefit of current genetic and satellite telemetry technology. Originally, the M'Clintock Channel and Gulf of Boothia areas were not identified as distinct units and the combined estimate for these two "subpopulations" was 1,081 bears. Due to the known bias of non-representative sampling, the estimate was later increased to 900 for the M'Clintock Channel and 900 for the Gulf of Boothia, based on the assumption that harvests at that time were sustainable. Subsequently, local hunters advised that 700 might be a more accurate estimate for the M'Clintock Channel population. Under a Local Management Agreement between Inuit communities that share this population, the harvest quota for this area was revised to levels expected to achieve slow growth based on the population estimate of 700 polar bears. We approved this population although Canada considered the population estimate information as "poor." We made this decision because Canada, in conjunction with the local communities, agreed to the reduction (from 900 to 700) in the population estimate, hunting had been at a 2 male to 1 female sex ratio for several years, and there was a management agreement in place.

Canada initiated a new study of the polar bear population in M'Clintock Channel in 1998 to assess the population size currently being used to calculate harvest quotas. At the 2000 PBTC meeting, the GNUN presented preliminary results of the mark-recapture analysis based on data collected during 1998 and 1999. Although cautioning that the results were incomplete, the polar bear

managers estimated that the newly revised population size for the M'Clintock Channel population was between 360 and 390 bears, considerably lower than the previous estimate of 700. The GNUN considered the reliability of the new estimate "poor," and noted that a more accurate estimate was to be calculated following the end of the 3-year mark-recapture study.

Following the end of the study in 2000, the GNUN provided us with preliminary results based on data collected in 1998, 1999, and 2000. The recalculated population estimate of polar bears in M'Clintock Channel was between 238 and 399 bears, with 288 as the best preliminary estimate. Based on this updated estimate, the GNUN recalculated the maximum sustainable harvest that would support the population at its current level, with no population growth, at 8 bears per year (4 males and 4 females). The quota since 1993 has been set at between 32 and 34 bears. The GNUN indicated that, at that rate of harvest, the population was declining and would be reduced to zero in 10 years. With no harvest, the population would increase at only 4 percent annually. Thus, recovery of this population will be slow and each year of over-harvest will delay recovery time by a minimum of 2 years. The GNUN noted that it would be evaluating future management goals for this population such as identifying a target population recovery level. At the 2001 PBTC meeting, the GNUN estimated that the time for an unharvested polar bear population to double is about 25 years, and indicated that a long-term moratorium may be necessary for the M'Clintock Channel population to recover its former numbers.

In 2001, the GNUN conducted more stringent analyses of the 1998 to 2000 mark-recapture data. Using two different stratified mark-recapture models, estimates of 455 (standard error = 215) and 243 (standard error = 49) bears were calculated for the M'Clintock Channel population. The GNUN was unable to produce satisfactory estimates using these models, which they attribute to capture heterogeneity. Based on an average of the best analysis models following Burnham and Anderson (1998), the GNUN calculated what they consider the current best estimate, 367 bears (standard error = 191), for the M'Clintock Channel population. We note that the GNUN's re-analysis of the base core population numbers resulted in an increase from the preliminary estimate of 288 bears, as reported in the emergency interim rule, to the current best estimate of 367 bears. This increase

is not sufficient to remove our concern that the M'Clintock Channel population has been severely reduced, nor affect the outcome of this final rule. We consider the mid-1970's estimate of 900 bears to be the best information available for the historical baseline of this population. Even though each subsequent revision of the population estimate was considered "poor" by Canada, we have accepted the updated estimates as the best information available at the time. We conclude that the current best estimate of 367 bears indicates that the M'Clintock Channel population has severely declined over time, and is consistent with our findings in the emergency interim rule.

Further, the CWS reports that extensive new data analysis and field work need to be conducted before revisions to the population estimate for the M'Clintock Channel can be made. The GNUN suggests that at least 2 to 3 additional years of sampling will be required before accurate estimates of survival and population numbers can be obtained. The GNUN plans to continue the mark-recapture study and collect additional population data as early as 2002. The CWS has indicated that it will continue to provide new population information to us as it becomes available.

How Are Polar Bears Managed in the M'Clintock Channel Population?

The quota for the M'Clintock channel population, based on a population estimate of 700 bears, has been set at between 32 and 34 bears since 1993. At the time the emergency interim rule was published, Canada had made no adjustment to the quota to reflect the new population information since polar bears are co-managed with local communities through agreements and any modification requires community consultation. Discussions with local communities to develop the best plan of action were completed earlier this year.

On January 16, 2001, the Minister of Sustainable Development, GNUN, accepted the decision of the NWMB to reduce the quota for the M'Clintock Channel population to 12 polar bears (8 males and 4 females) for the 2000/2001 harvest year followed by a moratorium on harvest in 2001/2002. The NWMB based their decision on the community recommended quota of 12 animals and the available information that suggested if the full quota of 12 were taken for the 2000/2001 harvest season, the average harvest over the 2 years would be 6, which was within the harvest limits considered by Canada to be sustainable for the lowest population estimate. The GNUN explained that the quota

reduction in 2000/2001 and harvest moratorium in 2001/2002 will provide time for further community consultation while protecting the population from additional decline.

The NWMB further explained that, as part of the co-management process, any change in the quota must not rely solely on scientific data but must also take into account traditional knowledge. The NWMB will work with their co-management partners to ensure traditional knowledge information is collected and integrated with the scientific information in order to better manage the M'Clintock Channel polar bear population. The NWMB also noted that both cultural and economic aspects must be taken into account in the recovery plan, as a small quota, even in a severely reduced population, may be used as an effective conservation measure. The GNUN agreed that enhanced economic value is a positive factor in co-management conservation strategy. Over the next year, the GNUN and NWMB will work with their co-management partners to assess the situation for the M'Clintock Channel population and develop a long-term strategy and recovery goals.

The SCI and Conservation Force recommended that our decision take into account the benefits of sport hunting which provide conservation incentives, management revenues, and income for the local communities. We recognize that, under certain conditions, sport hunting can be a useful management tool and Canada has incorporated it into their management program for polar bears. However, the MMPA requires us to consider not whether sport hunting is beneficial but whether Canada's management is based on scientifically sound quotas that ensure the maintenance of the population at a sustainable level. Long-term management programs based on sustainability will yield greater economic benefits than short-term programs that are not based on sound principles of resource optimization.

Although the SCI agreed that the current data indicate either a reduced population or a previous overestimate, they felt that our emergency interim rule was premature and arbitrary because it resulted in a complete loss of sport-hunting revenue for the local communities and interfered with the co-management process. SCI and NWMB suggested that we modify the emergency interim rule to allow the import of sport-hunted polar bears taken under the reduced quota because a complete ban on import would be an economic and cultural detraction to local people. We disagree with the SCI that our

decision was arbitrary. Our decision was based on the best available information which indicates the M'Clintock Channel population has been severely reduced and that this population no longer meets the statutory criteria of the MMPA under which imports may be authorized. While we recognize Canada's co-management system, and its need to balance cultural, economic, and conservation concerns, we must make our decision on specific criteria in the MMPA set out by Congress. Indeed, we consider this population to have severely declined from its historical population of 900 bears, and so cannot make the finding that the population is being maintained at a sustainable level, even under the reduced quota. Under the purposes and conservation goals of the MMPA, once the population has declined so severely, any take of bears would not be considered sustainable. The reduced quota set by Canada may indeed keep this population from declining any further, but does not work toward recovering the population to its historical population. The GNUN has estimated that, with no harvest, the population would increase at only 4 percent annually and take about 25 years to double. Thus, it is clear that the recovery of the population will be slow and, even with a long-term moratorium, it will be many years before the M'Clintock Channel population will be able to recover its former numbers. The MMC agreed with us that it does not appear that the management of the M'Clintock population has been based on scientifically sound quotas ensuring the maintenance of the population at a sustainable level as required by the MMPA. We note that the GNUN wrote that its goal is the sustainable use of polar bear populations, and the MMPA import criteria do not conflict with its current or developing polar bear management policies. The GNUN plans to identify a target recovery level as it evaluates future management goals for this population.

The HSUS and MMC supported our decision to change the import status of the M'Clintock Channel polar bear population. However, the HSUS expressed concern that Canada failed to recognize the downward population trend of the M'Clintock Channel population. It believes this situation reflects on Canada's entire management program, and maintains there is no assurance that any of Canada's polar bear populations are being managed sustainably. The MMC recommended that Canada use more conservative population estimates in setting quotas

and conduct more frequent, rigorous population assessments, especially for populations where the data is considered "fair" or "poor" in order to ensure that Canada's polar bear populations are being managed sustainably.

Although we have concerns about the M'Clintock Channel population, we disagree that the decline in this population implies that Canada is not managing their polar bear populations sustainably. Canada has a robust management program (see previous **Federal Register** notices (62 FR 7302 and 64 FR 1529), that is periodically reviewed by the PBTC and the IUCN (World Conservation Union) Polar Bear Specialist Group). There has been considerable discussion of Canada's population management, and Canada continues to look at new models and research data to better manage their polar bear populations. This adaptive management is important because polar bears are characterized by low reproductive potential, long life spans, low density, and wide distribution and are sensitive to harvest rates.

The GNUN emphasizes that the severe decline of the M'Clintock Channel population is not characteristic of Canada's management program and assures us that they are taking steps to correct the system. At the 2001 PBTC meeting, the GNUN presented a new management approach under development that they anticipate will reduce the frequency and impact of population reduction to more acceptable levels. The new approach, based on population viability analysis (PVA), considers the reproduction potential of the population, the uncertainty of the underlying demographic information, and statistical uncertainty when making harvest level determinations. The GNUN anticipates examining options that include scaling back harvest rates in small populations while performing more frequent inventories of larger populations. A systematic integration of traditional knowledge with scientific information through the development of a categorical range of harvest policies that incorporates the perceptions of the hunters is also planned. The GNUN anticipates that the enhanced PVA approach will help them to identify where they need to modify harvest levels, prior to the next population inventory, due to changing environmental conditions or optimistic population estimates.

Table 1 summarizes the polar bear harvest in the M'Clintock Channel population during the 1989/1990 to 1999/2000 harvest seasons. Sport harvest in M'Clintock Channel began in

1991 with no sport hunts conducted from 1992 through 1994. A total of 288 bears were harvested over the past 11 years, ranging from an annual harvest of 17 to 37 bears. Of these bears, 65 (57 male, 7 female, 1 unknown) were sport hunted. As of December 31, 2000, a total of 62 import permits, including for 3 pre-Amendment bears, had been issued for bears sport hunted from this population by U.S. citizens. Since the MMPA was amended in 1994 to allow for the import of certain sport-hunted

trophies, the number of bears taken in sport hunts in M'Clintock Channel as a percentage of the total annual harvest has ranged from a low of 29 percent (1994/1995) to a high of 59 percent in 1999/2000.

Conservation Force commented that it was important that the sport-hunting community not be misrepresented or perceived negatively due to the population decline in the M'Clintock Channel and the NWMB related similar concerns from the Native community

harvesters. As the NWMB emphasized, the decline was not the fault of the community harvesters as they have consistently adhered to their quotas, including the allocation of bears for sport hunting. As shown in Table 1, the total harvest of polar bears for all purposes did not exceed the annual quota nor did sport hunting increase the number of bears taken annually over the past 10 years.

TABLE 1.—POLAR BEAR HARVEST IN M'CLINTOCK CHANNEL

Season	Regular			Sport			Problem		Other		Total				Quota
	M	F	U	M	F	U	M	F	M	F	M	F	U	T	
1989/90	20	17	.....	.....	.....	.....	.....	.....	.....	.....	20	17	0	37	*81
1990/91	12	15	1	.....	1	1	2	.....	.....	.....	14	16	2	32	*85
1991/92	24	14	.....	.....	.....	.....	.....	.....	.....	.....	24	14	0	38	43
1992/93	11	8	.....	.....	.....	.....	1	.....	.....	.....	12	8	0	20	28
1993/94	15	6	.....	.....	.....	.....	.....	1	.....	.....	15	7	0	22	32
1994/95	5	3	.....	5	.....	.....	.....	.....	1	3	11	6	0	17	32
1995/96	11	7	.....	8	.....	.....	.....	.....	.....	.....	19	7	0	26	33
1996/97	6	6	.....	15	1	.....	.....	.....	.....	.....	21	7	0	28	32
1997/98	6	6	.....	11	1	.....	.....	.....	.....	.....	17	7	0	24	34
1998/99	9	4	.....	8	1	.....	.....	.....	.....	.....	17	5	0	22	32
1999/00	6	3	.....	10	3	.....	.....	.....	.....	.....	16	6	0	22	32
Total	125	89	1	57	7	1	3	1	1	3	186	100	2	288	.....

Regular=Community subsistence hunt.

Sport=Must be guided by Native hunter, part of community quota.

M=male; F=female; U=unsexed; T=total.

*Combined quota with the Gulf of Boothia population.

The GNUN estimates that female bears comprise 65 percent of the current sex ratio of the adult (age 3+) population in M'Clintock Channel. This suggests that the number of adult males has been reduced, so that any continuing harvest will likely be increasingly composed of adult females. Protection of the female component of the population was an important consideration in developing sustainable harvest limits. Any additional take of females will further prolong the recovery time for this population.

The HSUS expressed concern that the reduction in the number of large males in this population may affect the recovery of this population while Conservation Force asserted that sport hunting " * * * has had a minimal or no effect on the population reproduction." We acknowledge that genetic viability, mate selection, and genetic vigor are not well documented for polar bears, and it is unclear how the reduction of large males affects a polar bear population. It is known that male polar bears are opportunistic breeders and do not contribute to the care of the young. So the loss of a male bear will generally have less of an impact on population recruitment than the loss of a female. Canada's selective harvest of 2 males to 1 female is utilized to conserve the

population by reducing the impact of the harvest of females.

How Does the Change in the Finding for the M'Clintock Channel Population Affect Me?

We are adopting the emergency interim rule as a final rule without substantive change. The M'Clintock Channel will remain in the list of approved populations in 50 CFR 18.30(i)(1) only for polar bears sport hunted in this population on or before May 31, 2000, the close of the 1999/2000 Canadian hunting season. Any person who hunts in the M'Clintock Channel population between this closure date and the date of any future re-approval of this population will not be able to legally import the polar bear trophy into the United States.

This action was necessary because the CWS provided us with new information for the M'Clintock Channel polar bear population which indicated that the population is severely reduced and harvest quotas have not ensured a sustainable population level. The MMPA requires us to review the best scientific information available; if we receive substantial new information on a population, we must review it and make a new finding as to whether to continue to approve the population. The

new information for the M'Clintock Channel population revealed that scientifically sound quotas ensuring the maintenance of the population at a sustainable level are not in place and that terms of the 1973 International Agreement on the Conservation of Polar Bears, that requires the Parties to "manage polar bear populations in accordance with sound conservation practices based on the best available scientific data" are not being met. The information also indicates that, even with remedial steps, the population will not likely recover for some time. We note that information received since the publication of the emergency interim rule is not sufficient to remove our concern that the M'Clintock Channel population has severely declined.

Conservation Force urged that we not do anything to obstruct future re-approval of this population, and the NWMB and SCI recommended that we reinstate the approval of the M'Clintock Channel population as soon as possible. We will continue to work with Canada to receive the most current data on the M'Clintock Channel polar bear population. When substantial new scientific and management data become available that indicate the status of this population has changed, we will review it and make a new finding as to whether

the M'Clintock Channel population should be re-approved as a population eligible for the import of sport-hunted trophies.

SCI suggested that we keep the M'Clintock Channel listed as an approved population, subject to the lifting of the moratorium, consistent with the approach of how we initially approved the Viscount Melville Sound population in 1997. We do not agree for the following reasons. There was a 5-year voluntary moratorium on the take of polar bears in the Viscount Melville Sound population. It was lifted effective August 1, 1999, based on recent scientific management information Canada considered "good." In contrast, the M'Clintock Channel population has severely declined and the GNUN has indicated that any harvest may delay the recovery of this population by more than 22 years. A reduced quota has been set for this harvest season, and the moratorium on harvest is currently in place only for the next season. The co-managers will use the harvest moratorium during next season to continue discussions on what the recovery level should be for this population and whether to allow a small quota during the recovery period.

The MMC agrees with our determination that the M'Clintock Channel population no longer meets the statutory criteria under which imports may be authorized and recommends that the emergency interim rule be adopted as a permanent rule.

What About the Approval of Other Polar Bear Populations?

The SCI urged that the Gulf of Boothia polar bear population be added as an approved population, based on new mark-recapture data available from the same study period (1998 to 2000) as the M'Clintock Channel. The NWMB also suggested we work together to approve the import of sport-hunted trophies from Nunavut polar bear populations that have not yet been approved. We note that the approval of the Gulf of Boothia or other polar bear populations is not the subject of this rulemaking. You should refer to the February 18, 1997 (62 FR 7302), and January 11, 1999 (64 FR 1529), rules for more information on why these populations were deferred. As indicated in these rulemakings, as future substantial scientific and management data become available on these populations, we will evaluate it to determine whether a proposed rule should be published that would add such populations to the approved list in § 18.30(i)(1). The GNUN presented preliminary results of a 3-year mark-recapture study for the Gulf of

Boothia population at the 2001 PBTC meeting. Although they indicated that this population appears to have remained abundant and productive, they recognize, along with the NWMB, that additional collection and analysis of these data are necessary before a more reliable population estimate can be made. The continuation of the mark-recapture study is anticipated to begin as early as spring of 2002. Except for the Gulf of Boothia population, Nunavut shares the other deferred populations with Greenland, another Canadian province, or both. In addition to meeting the other required criteria, joint management agreements will need to be in place before we can consider approval of these populations.

Why Were the Regulations Revised To Include Nunavut Territory?

This rule affirms the emergency interim rule that, besides restricting the import of polar bears from the M'Clintock Channel population, updated our regulations at 50 CFR 18.30 to reflect that sport hunting of polar bears is legal in both the NWT and Nunavut Territory and that approved populations may now fall under either the GNWT and/or GNUN jurisdiction. Since the publication of the February 18, 1997 (62 FR 7302), and January 11, 1999 (64 FR 1529), final rules, the Nunavut Territory, formerly part of the NWT, officially joined the Federation of Canada on April 1, 1999. Prior to this, legal sport hunting of polar bears in Canada took place only in the NWT; now the majority of polar bear populations lie within or are shared with Nunavut. All GNWT legislative laws and agreements (including the polar bear management agreements) in place still stand in Nunavut. Inter-jurisdictional management agreements are being drafted or revised to reflect the change in government. Management agreements between participating communities and the GNWT and/or the GNUN (formerly part of GNWT), are still in effect for the approved polar bear populations. Management of polar bear populations now falls under the Department of Resources, Wildlife, and Economic Development (formerly the Department of Renewable Resources), GNWT, and/or the Department of Sustainable Development, GNUN.

What Recent Management Changes Has Canada Made for the Viscount Melville Sound Population?

The emergency interim rule also announced that Canada has lifted its 5-year harvest moratorium in the Viscount Melville Sound population effective August 1, 1999. This population was

added to the list of populations approved for the import of sport-hunted polar bear trophies in our February 18, 1997 (62 FR 7302), rulemaking, subject to the lifting of the harvest moratorium. The current annual harvest quota is set at 4 bears, with 1 female take allowed.

Why Has the Amendatory Language of 50 CFR 18.30 Changed?

For the reasons given in the emergency interim rule and in this document, we are adopting the substance of the emergency interim rule. However, we are making one, non-substantive change to the amendatory language in the emergency interim rule. When the emergency interim rule was published in the **Federal Register** on January 10, 2001 (66 FR 1901), language in § 18.30(a)(4)(iv) was inadvertently removed due to a formatting error in the text. We are simply adding back to that paragraph language that should not have been deleted.

Required Determinations

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

This action also affirms the information concerning the required determinations contained in the emergency interim rule as follows:

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The economic effects of this rule will impact a relatively small number of U.S. sport hunters. Since the trophies are for personal use and may not be sold in the United States, there are no expected market, price, or competitive effects adverse to U.S. business interests, or to any small entity. Some incidental economic benefits received by the travel/airline, taxidermist, and sport-hunting industries are expected to remain unchanged by this interim rule. If an estimated 10 U.S. citizens hunted a

polar bear in M'Clintock Channel, Canada, each year at a total cost of \$21,000 (US) for each hunt, then \$210,000 would be expected to be spent, mostly in Canada. Because the small number of U.S. hunters that hunt for polar bears in M'Clintock Channel, Canada, are the only group affected by this rule, the fact that no commercial activity in bear products is involved, and the effect of such hunts for U.S. outfitters and transportation services is likely to be small, this interim rule is not expected to be a major rule and will not have a significant economic effect.

Although we are amending our import regulations to reflect that bears sport hunted in the M'Clintock Channel population after the close of the 1999/2000 Canadian hunting season will no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons, there are 6 other populations, including Viscount Melville Sound, from which U.S. sport hunters will continue to be able to import legally hunted bears. Thus, we expect there will be no substantial loss to U.S. hunters. The revision of our regulations at 50 CFR 18.30 to include the new territory of Nunavut will have no economic effect as we are simply updating our regulations to reflect that populations approved for the import of sport-hunted polar bear trophies may now fall under either GNWT and/or GNUN jurisdiction.

This rule will not create inconsistencies with other agencies' actions. Since 1972, responsibility for implementing the MMPA has been split between two federal agencies. Acting on behalf of the Secretary, Department of the Interior, we have been delegated the MMPA authority for several species of marine mammals, including the polar bear. The National Marine Fisheries Service (NMFS) implements the MMPA authority of the Secretary, Department of Commerce, for whales, dolphins, and most pinnipeds (i.e., seals and sea lions). Currently, there are no special provisions in the MMPA for import of sport-hunted marine mammal species other than polar bear. Since the only federal agencies with authority for marine mammals are the NMFS and us, and the NMFS has not been delegated MMPA authority for this species and does not have any comparable action for other marine mammal species, this rule will not create inconsistencies with that agency's actions.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The groups most affected by this rule are the relatively small number of U.S. sport hunters who

would have chosen to hunt polar bear in the M'Clintock Channel population in Canada, and a comparatively small number of U.S. outfitters, taxidermists, and personnel who provide transportation services for travel from the United States to Canada. The revision of our regulations at 50 CFR 18.30 to include the new territory of Nunavut will have no effect as we are merely updating our regulations to reflect that populations approved for the import of sport-hunted polar bear trophies may now fall under either Government of Northwest Territories and/or Government of Nunavut jurisdiction. Similarly, the announcement of the lifting by Canada of a harvest moratorium in the Viscount Melville Sound population will also have no effect as this population was previously added to the list of populations approved for the import of sport-hunted polar bear trophies in our February 18, 1997 (62 FR 7302), rulemaking, subject to the lifting of the harvest moratorium.

This rule will not raise novel legal or policy issues. This interim rule is limited to the Service's review of new information obtained from Canada on one polar bear population previously approved for issuance of permits to import polar bear trophies personally sport hunted by U.S. residents. Under section 104(c)(5)(A) of the MMPA, before issuing a permit for the import of a polar bear trophy, we must make certain legal and scientific findings. In a previous rule published in 1997 [62 FR 7302], we put the public on notice that if we receive substantial new information on a population, we would review it and make a new finding, if necessary, after consideration of public comment. After reviewing the new information, we find that the M'Clintock Channel population no longer meets the import requirements of the MMPA. Due to the dramatic change in population status, we used an emergency interim rule to make the changes to our regulations effective immediately. The revision of our regulations at 50 CFR 18.30 to include the new territory of Nunavut will also not raise novel legal or policy issues as we are merely updating our regulations to reflect that populations approved for the import of sport-hunted polar bear trophies may now fall under either GNWT and/or GNUN jurisdiction. Similarly, we are merely announcing Canada's lifting of the harvest moratorium in the Viscount Melville Sound population, a population we previously added to the list of populations approved for the import of sport-hunted polar bear

trophies in our February 18, 1997 (62 FR 7302), rulemaking, subject to the lifting of the harvest moratorium.

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. Based upon our analysis of the factors identified above, we have determined that no individual industries within the United States will be significantly affected and no changes in the demography of populations are anticipated. This rule involves the import of polar bear trophies for personal, non-commercial use only, and therefore will have no effect on the commercial fur trade market. Polar bear sport hunting is not allowed within the United States. Therefore, sport hunting of polar bears in Canada can have no effect on polar bear sport hunts in the United States since such hunts are currently prohibited. For these reasons, and those described under the E.O. 12866 required determination above, we have, therefore, determined that the rule will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and have determined that a small entity flexibility analysis study is not necessary.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act:

This rule does not have an annual effect on the economy of \$100 million or more. The economic effects of this rule will impact a relatively small number of U.S. sport hunters. A total of 50 polar bears have been taken in sport hunts from the M'Clintock Channel between 1995 and 1999 with a range of 5 to 16 bears taken per year; approximately 74% of sport hunters are U.S. citizens. The announcement of the lifting by Canada of a harvest moratorium in the Viscount Melville Sound population will have no economic effect as this population was previously added to the list of populations approved for the import of sport-hunted polar bear trophies in our February 18, 1997 (62 FR 7302), rulemaking, subject to the lifting of the harvest moratorium. Since the trophies are for personal use and may not be sold in the United States, there are no expected market, price, or competitive effects adverse to U.S. business interests, or to any small entity. The revision of our regulations to include

the new territory of Nunavut will have no economic effect as we are merely updating our regulations to reflect the change in government jurisdiction for populations approved for the import of sport-hunted polar bear trophies.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The importation of polar bear trophies is for personal, non-commercial use only. The small benefits gained by U.S. outfitters and transportation services as U.S. hunters travel to Canada will most likely remain unchanged as most sport hunters will simply redirect their hunting efforts from the M'Clintock Channel to one of the 6 other approved populations. The revision of our regulations to include the new territory of Nunavut will have no effect as we are merely updating our regulations to reflect a change in government jurisdiction.

This rule will not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The groups most affected by this rule are the extremely small number of U.S. sport hunters who would have chosen to hunt polar bear in M'Clintock Channel, Canada, and a small number of U.S. outfitters, taxidermists, and personnel who provide transportation services for travel from the United States to Canada. The importation of legally taken sport trophies is still approved for 6 other populations from Canada, including Viscount Melville Sound, and it is anticipated that most sport hunters will simply redirect their hunting efforts to one of the 6 other populations. The revision of our regulations to include the new territory of Nunavut will have no effect as we are merely updating our regulations to reflect a change in government jurisdiction.

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. This rule is limited to our review of new information obtained from Canada on one polar bear population that we previously approved

for issuance of permits to import polar bear trophies personally sport hunted by U.S. residents. We are revising our regulations to include the new territory of Nunavut merely to reflect a change in government jurisdiction.

This rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. We have determined that the rule has no potential takings of private property implications as defined by Executive Order 12630, for the reasons described under the Executive Order 12866 required determination above.

The emergency interim rule placed the hunting community on immediate notice that our 1997 finding that approved the M'Clintock Channel population for multiple harvest seasons was no longer in effect after May 31, 2000, the end of the 1999/2000 Canadian hunting season. If hunters nonetheless took polar bears from this population after the emergency rule was published, they did so with full notice that the M'Clintock Channel population no longer met the eligibility criteria set out in the MMPA for the issuance of import permits.

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required since the rule is limited to the importation of personal sport-hunted polar bear trophies for personal (non-commercial) use, only by the person who sport hunted the trophy.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule is limited to our review of new information obtained from Canada on one polar bear population previously approved for issuance of permits to import polar bear trophies personally sport hunted by U.S. residents. Under section 104(c)(5)(A) of the MMPA, before issuing a permit for the import of a polar bear trophy, the Service must make certain legal and scientific findings. In a previous rule published in 1997 (62 FR 7302), the Service told the public that the findings that approved populations as published in the CFR are aggregate findings applicable in subsequent years. However, it also put the public on notice that if we receive substantial new information on a population, we would review it and

make a new finding after consideration of public comment. After reviewing the new information, we found that M'Clintock Channel no longer met the import requirements of the MMPA and amended our regulations to reflect that bears sport hunted in this population after May 31, 2000, the close of the 1999/2000 Canadian hunting season, would no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons. Due to the severe reduction in population, we used an emergency interim rule to make the changes to our regulations effective immediately. At the same time, we solicited comments and considered those comments in issuing a final rule.

This regulation does not contain new or revised information for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection associated with Federal Fish and Wildlife permits is covered by an existing OMB approval, and is assigned clearance number 1018-0093, Form 3-200-45, with an expiration date of March 31, 2004. Details of the information collection requirements for the import of sport-hunted polar bear trophies appear at Title 50 of the Code of Federal Regulations, Section 18.30(a). We 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.

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. The Department of the Interior has determined that the issuance of this action is categorically excluded under the Department's NEPA procedures in Part 516 of the Department Manual, Chapter 2, Appendix 1.10.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The rule is limited to our review of new information obtained from Canada on the M'Clintock Channel polar bear population. Polar bear sport hunting is not allowed within the United States. Therefore, sport hunting of polar bears in Canada can have no effect on polar bear sport hunts in the United States since such hunts are currently prohibited.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the emergency interim rule amending part 18, subchapter B of chapter I, title 50 of the Code of Federal Regulations and that was published at 66 FR 1901 on January 10, 2001, is adopted as a final rule with the following changes:

PART 18—[AMENDED]

1. The authority citation for part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Amend § 18.30 by revising paragraph (a)(4)(iv) to read as follows:

§ 18.30 Polar bear sport-hunted trophy import permits.

(a) * * *

(4) * * *

(iv) A certification from the Department of Resources, Wildlife, and Economic Development, Northwest Territories, or the Department of Sustainable Development, Nunavut Territory, that you or the decedent legally harvested the polar bear, giving the tag number, location (settlement and population), and season you or the decedent took the bear;

* * * * *

Dated: September 4, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 01-24947 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 660**

[Docket No. 001226367-0367-01; I.D. 092801C]

Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

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

ACTION: Inseason adjustments/fishing restrictions; request for comments.

SUMMARY: The NMFS announces changes to the following limited entry and open access trip limits in the Pacific Coast groundfish fishery: limited entry trawl for the ("DTS complex") (Dover sole, thornyheads, and sablefish) species, petrale sole, other flatfish, and arrowtooth flounder; limited entry trawl and open access for minor slope rockfish; limited entry trawl, fixed gear and open access for widow rockfish, yellowtail rockfish, Pacific ocean perch, other flatfish, minor shelf rockfish, canary rockfish, bocaccio rockfish, chilipepper rockfish, minor nearshore rockfish, and lingcod. In addition, this document defines measures that may be taken to keep recreational harvests of bocaccio and canary rockfish off California within the 2001 allocations. This document also announces the last cumulative trip limit period in 2001 for the "B" platoon, those limited entry trawl vessels designated to take their cumulative trip limits two weeks out of phase with the rest of the fleet. These actions, which are authorized under the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to assist the fisheries in achieving optimum yield (OY) while protecting overfished and depleted stocks.

DATES: Changes to management measures are effective 0001 hour (local time) October 2, 2001, (October 16, 2001 for the "B" platoon) unless modified, superseded, or rescinded. These changes are effective until the effective dates of the specifications and management measures for the Pacific Coast groundfish fishery for 2002, which will be published in the **Federal Register**. Comments on this rule will be accepted through October 22, 2001.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko, Northwest Region, NMFS, 206-526-6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council) at its September 10-14, 2001, meeting in Portland, OR. Pacific Coast groundfish landings will be monitored throughout the remainder of the year, and further adjustments to the trip limits will be made as necessary to stay within the

OYs and allocations announced in the 2001 annual specifications and management measures for the groundfish fishery, published in the **Federal Register** at 66 FR 2338 (January 11, 2001), as amended at 66 FR 10208 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), at 66 FR 28676 (May 24, 2001), at 66 FR 35388 (July 5, 2001), and 66 FR 38162 (July 23, 2001).

To rebuild the canary rockfish stock, which was declared overfished in 2000 (65 FR 221, January 4, 2000), the Council chose to maintain very restrictive canary rockfish trip limits throughout the year. The reduced limits were intended to eliminate direct targeting on canary rockfish. To reduce the incidental catch of canary rockfish, the Council has constrained target fisheries for associated species, and has diverted fishing effort off the continental shelf where canary rockfish are commonly found. Despite these efforts, commercial landings of canary rockfish have been higher than expected through August. Concerns about the incidental catch of canary rockfish have resulted in NMFS deviating from two of the Council's recommendations and adopting more precautionary measures for trip limit adjustments in the limited entry trawl fisheries.

At the September meeting, the Council recommended no retention of canary rockfish in the limited entry fixed gear and open access fisheries coastwide, but did not address canary rockfish catch in the trawl fisheries. Throughout 2001, the trawl fisheries have been structured to minimize the interception of canary rockfish and NMFS believes that the Council had intended to also further restrict landings of canary rockfish in the trawl fishery. Therefore, consistent with the limited entry fixed gear and open access fisheries restrictions, NMFS will also prohibit the retention of canary rockfish in the limited entry trawl fisheries starting with the October trip limit period. Changes to trip limits for trawl gear fisheries may affect either of the small footrope or large footrope bottom trawl fisheries or the mid-water trawl fisheries.

To allow access to more abundant flatfish stocks, the Council recommended increasing the limited entry trawl gear trip limits for petrale sole taken with small footrope gear from 15,000 lb (16,804 kg) per month to 30,000 lb (13,608 kg) per month, and for large footrope gear from 100 lb (45 kg) per trip and 1,000 lb (454 kg) per month to 30,000 lb (13,608 kg) per month, beginning with the October trip limit period. Petrale sole generally move to

deep water during the winter months and are not associated with canary rockfish. However, during October some petrale sole may still be found on the continental shelf and a trip limit increase could result in a high incidental catch of canary rockfish. Therefore, NMFS is maintaining the current trip limits for petrale sole through October. During the November and December cumulative periods, NMFS will implement the Council's recommendation of a large and small footrope petrale sole limit of 30,000 lb (13,608 kg) per month.

Limited Entry Trawl Gear Limits for DTS Complex North and South of 40°10' N. Lat.

Dover sole, thornyheads, and sablefish are managed as the "DTS complex." The best available information indicates that DTS catch in the limited entry trawl fishery has been greater than expected, with Dover sole at 92.0 percent, sablefish at 89.0 percent, and shortspine thornyhead at 79.7 percent of their allocations, through August 31, 2001. To allow fishers access to flatfish stocks without exceeding the Dover sole or sablefish OYs, the Council recommended prohibiting retention of DTS species in the limited entry trawl fishery coastwide starting October 2, 2001.

To account for discard mortality of incidentally caught DTS species in the flatfish fisheries, bycatch rates based on 1999 state logbook data will be used as inseason deductions from remaining DTS allocations. These bycatch rates measure unavoidable associated catch and are based on tows unconstrained by trip limits from 1999 state logbook data. In the petrale sole fishery, rates of 0.8 percent for Dover sole, 5.0 percent for sablefish, and 0.5 percent for shortspine thornyhead will be applied to the landed catch of other flatfish to calculate the amount of incidentally caught DTS species. For the other flatfish fishery, rates of 0.5 percent for Dover sole, 0.12 percent for sablefish, and 0.1 percent for shortspine thornyhead will be applied to the landed catch of other flatfish to calculate the amount of incidentally caught DTS species.

Limited Entry Trawl Gear and Open Access Limits For Minor Slope Rockfish North of 40°10' N. Lat.

NMFS declared darkblotched rockfish overfished on January 11, 2001 (66 FR 2338). Although darkblotched rockfish has a separate ABC and OY, it is managed as part of the minor slope rockfish complex. The best available information indicates that 90.6 percent

of the open access and limited entry allocations for darkblotched rockfish had been taken through August. To encourage rebuilding of the darkblotched rockfish stock, while at the same time allowing for modest levels of bycatch in other fisheries, the Council recommended decreasing effort in the directed fishery for minor slope rockfish during the remainder of 2001. As of October 2, 2001, the limited entry trawl and open access gears will be prohibited from taking and retaining, possessing or landing minor slope rockfish north of 40°10' N. lat. Landings of darkblotched rockfish taken with limited entry fixed gear have been low this year. Therefore, the limited entry fixed gear limits for minor slope rockfish north of 40°10' N. lat. will continue as previously announced.

Limited Entry Trawl Gear Limits for Widow Rockfish and Yellowtail Rockfish North of 40°10' N. Lat.

Since 2000, the use of mid-water trawl gear has been recommended by the Council as an effective method to harvest widow and yellowtail rockfish above the ocean floor with little incidental catch. The best available information indicates that the catch of widow rockfish in the limited entry trawl fishery was at 66.4 percent and yellowtail rockfish at 74.5 percent of their respective allocations through July. To reduce the likelihood of reaching the widow rockfish OY early and allow for a winter mid-water fishery, the mid-water trawl options for widow and yellowtail rockfish north of 40°10' N. lat. have been restricted to the 1,000 lb (454 kg) per month small footrope limit since July, except for the limit for widow rockfish landed with Pacific whiting which is 2,000 lb (907 kg) per month. To provide fishers access to a widow rockfish mid-water fishery without exceeding the OY before the end of the year, the Council recommended extending the current trip limits through October, then increasing the cumulative limits during November and December. Trip limits for the November to December period will be increased from the scheduled 10,000 lb (4,536 kg) per 2 months to 25,000 lb (11,340 kg) per 2 months.

The incidental catch of canary rockfish is higher during directed fishing for yellowtail rockfish than during directed fish for widow rockfish. Therefore, to discourage directed fishing for yellowtail rockfish because of the associated landing of canary rockfish, the Council recommended a decrease in the scheduled trip limits for yellowtail rockfish during the November to December period. Limits are intended to

allow for incidental yellowtail rockfish catch taken by vessels using mid-water trawl gear to harvest widow rockfish, while reducing the incentive for directed yellowtail fishing. For the November through December period, the cumulative 2 month limit for yellowtail rockfish taken with limited entry mid-water trawl gear is decreased from 20,000 lb (9,072 kg) per 2 months to 15,000 lb (6,804 kg) per 2 months.

In keeping with natural catch association patterns and to reduce yellowtail rockfish discards in the flatfish fisheries, trip limits for yellowtail rockfish taken with flatfish in small footrope fisheries were introduced in 2000 (65 FR 45308, July 21, 2000). To allow incidental catch of yellowtail by vessels targeting flatfish with a small footrope, the Council recommended maintaining current trip limits for the remainder of the year. During the November through December period, the limited entry trawl gear trip limit for yellowtail rockfish taken as bycatch with flatfish shall be no more than the sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder, not to exceed 7,500 lb (3,402 kg) per trip, nor 15,000 lb (6,804 kg) per 2 months.

Limited Entry Trawl Gear Limits for Other Flatfish, Petrale Sole, and Arrowtooth Flounder North and South of 40°10' N. Lat.

To allow access to allocations for the healthier flatfish stocks, the Council recommended a trip limit for "other flatfish" taken with small footrope gear in the limited entry trawl fishery of 30,000 lb (13,608 kg) per month starting with the October period. Other flatfish taken with large footrope gear in the limited entry trawl fishery would continue at 1,000 lb (454 kg) per trip. As noted above, the Council's recommended limit for petrale sole taken in the limited entry trawl fisheries, for both small and large footrope gear, was 30,000 lb (13,608 kg) per month. Concerns about the incidental catch of canary rockfish have resulted in NMFS deviating from the Council's recommendations and adopting more precautionary measures. To minimize the catch of associated rockfish species, including canary rockfish, by vessels directing effort on other flatfish and petrale sole, NMFS will maintain the current small footrope limits of 45,000 lb (20,412 kg) per month for other flatfish, with a sub-limit of 15,000 lb (6,804 kg) per month for petrale sole, and the large footrope limits for petrale sole of 100 lb (45 kg) per trip and an "other flatfish" per trip

limit of 1,000 lb (454 kg) during October. NMFS will implement the Council's recommendation during the November to December period. Therefore, for the November and December period, both the small and large footrope petrale sole limits will be set at 30,000 lb (13,608 kg) per month and the small footrope other flatfish limit will be set at 30,000 lb (13,608 kg) per month. For large footrope gear, a 1,000 lb (454 kg) per trip other flatfish limit will continue to be in effect. As of October 2, 2001, arrowtooth flounder taken in the limited entry trawl fisheries using large and small footrope gear will have a 5,000 lb (2,268 kg) per trip limit and a 30,000-lb (13,608-kg) monthly limit.

Limited Entry Trawl, Fixed Gear and Open Access Limits For Pacific Ocean Perch

The best available information indicates that 90.6 percent of the open access and limited entry allocations for darkblotched rockfish had been taken through August. Concerns about the incidental catch of darkblotched rockfish by vessels directing effort on Pacific ocean perch have resulted in the Council recommending that further taking and retaining, possessing or landing of Pacific ocean perch be prohibited for all limited entry and open access gears for the remainder of the year. NMFS concurs with this recommendation.

Limited Entry Trawl, Fixed Gear and Open Access Limits For Bocaccio and Canary Rockfish Coastwide

Bocaccio rockfish (64 FR 49092, September 10, 1999), along with canary rockfish, have been declared overfished. The Council is developing rebuilding plans for these two species. The 2001 OYs for bocaccio rockfish and canary rockfish were set consistent with the rebuilding plans under development. Throughout the year, the Council has set low trip limits to allow incidental catch of these species in fisheries for healthy stocks while removing the incentive for directed fishing. Despite these conservative measures, the catch of bocaccio and canary rockfish has been higher than expected during 2001. To prevent these overfished species from exceeding their 2001 OYs and hindering rebuilding, the Council recommended prohibiting taking and retaining, possessing or landing of bocaccio rockfish and canary rockfish in the limited entry and open access fisheries (including the exempted gears) coastwide for the remainder of the year. NMFS concurs with this recommendation.

Limited Entry Trawl Limits For Shelf Rockfish North and South of 40°10' N. Lat.

Throughout the year, fishing effort has been diverted off the sea floor of the continental shelf where several overfished species, canary, widow, and bocaccio rockfish, are commonly found. To allow for modest levels of incidental catch of shelf rockfish in the limited entry trawl fishery for flatfish while discouraging targeting of shelf species, the Council recommended a decrease in the cumulative limits for minor shelf rockfish. As of October 2, 2001, the limit for minor shelf rockfish taken in the limited entry trawl fishery north of 40°10' N lat. will decrease from 1,000 lb (454 kg) per month to 300 lb (136 kg) per month and south of 40°10' N. lat. from 1,000 lb (454 kg) to 500 lb (227 kg) per month.

Limited Entry Trawl Small Footrope Gear, Limited Entry Fixed Gear and Open Access for Chilipepper Rockfish South of 40°10' N. Lat.

NMFS declared bocaccio rockfish overfished in 1999. Concerns about the incidental catch of bocaccio rockfish by vessels directing effort on chilipepper rockfish resulted in the 2001 OY for chilipepper rockfish being set lower than would have otherwise been necessary. Concerns about the incidental catch of bocaccio rockfish resulted in the Council also recommending a decrease in cumulative limits for chilipepper rockfish taken with small footrope trawl from 7,500 lb (3,402 kg) per 2 months to 5,000 lb (2,268 kg) per 2 months for the November through December periods. The Council additionally recommended closing chilipepper rockfish landings for the limited entry fixed gear and open access fisheries starting October 2, 2001. NMFS concurs with this recommendation.

Limited Entry Trawl, Fixed Gear and Open Access Limits For Lingcod North and South of 40°10' N. Lat.

The catch of lingcod in the trawl and fixed gear fisheries during 2001 has been slightly lower than expected. Through July 31, 2001, the landings of lingcod were at 55.8 percent of the OY. In order to provide fishers greater access to the OY for lingcod, the Council recommended an increase in lingcod trip limits. For the month of October, lingcod trip limits for all commercial fisheries coastwide will increase from 400 lb (181 kg) per month to 500 lb (227 kg) per month. To limit effort during the winter spawning season, there will still be no retention of lingcod during

November through December in all fisheries coastwide.

Limited Entry Fixed Gear and Open Access Limits for Minor Nearshore Rockfish North and South of 40°10' N. Lat.

Because the nearshore rockfish recreational harvests north of 40°10' N. lat. have been greater than expected, the Council recommended reducing trip limits to slow the fishery. The scheduled cumulative limits for minor nearshore rockfish taken with limited entry fixed gear and open access were 7,000 lb (3,175 kg) per 2 months, with a limited entry sub-limit of no more than 4,000 lb (1,814 kg) and an open access sub-limit no more than 900 lb (408 kg) of species other than black or blue rockfish. For both limited entry fixed gear and open access, the new nearshore rockfish limits will be 2,000 lb (907 kg) per month, of which no more than 800 lb (363 kg) may be species other than black or blue rockfish effective October 2, 2001. South of 40°10' N. lat., nearshore rockfish harvest has been relatively slow in 2001. Thus, cumulative limits of minor nearshore rockfish taken with limited entry fixed gear will increase from 2,000 lb (907 kg) per 2 months to 3,000 lb (1,361 kg) per 2 months as of October 2, 2001. As of October 2, 2001, cumulative limits of minor nearshore rockfish taken with open access gear south of 40°10' N. lat. will also increase, from 1,200 lb (544 kg) per 2 months to 3,000 lb (1,361 kg) per 2 months.

Limited Entry Fixed Gear and Open Access Limits for Shelf Rockfish, including Widow Rockfish and Yellowtail Rockfish, North and South of 40°10' N Lat.

To prevent bocaccio and canary rockfish from exceeding their 2001 OYs and hindering rebuilding, the Council recommended closing directed fishing for all shelf rockfish species.

Effective October 2, 2001, the taking and retaining, possessing or landing of minor shelf rockfish, and of widow and yellowtail rockfish, north and south of 40°10' N. lat. in the limited entry fixed gear and open access fixed gear fisheries will be prohibited.

California Recreational Limits for Bocaccio and Canary Rockfish

The California Fish and Game Commission will meet in early October to discuss recreational catch and management measures for bocaccio and canary rockfish. At this time, the recreational catch of canary and bocaccio rockfish is approaching harvest guidelines. If the Commission

determines at that meeting to close recreational fisheries for canary and bocaccio rockfish inside state waters because the harvest guidelines have been reached, NMFS will publish complementary closures for Federal waters in the **Federal Register**.

Final Period for the "B" Platoon

NMFS also announces the last cumulative trip limit period in 2001 for the "B" platoon, those limited entry trawl vessels designated (on their limited entry permit) to take their cumulative trip limits 2 weeks out of phase with the rest of the fleet. For

vessels in the "B" platoon, the final cumulative period will be from November 16, 2001, through December 31, 2001. For species managed with monthly cumulative limits, vessels in the "B" platoon may take the November and December limits for those species during November 16, 2001, through December 31, 2001. For species for which there are 2 month cumulative limits, vessels in the "B" platoon may take the final 2 month cumulative limit during the final period from November 16, 2001, through December 31, 2001.

NMFS Actions

For the reasons stated here, NMFS announces the following changes to the 2001 annual specifications and management measures (66 FR 2338, January 11, 2001, as subsequently amended) as follows:

In Section IV, under B. *Limited Entry Fishery*, and under C. 1. Trip Limits in the Open Access Fishery, Tables 3, 4, and 5 are revised to read as follows.

IV. NMFS Actions

B. Limited Entry Fishery

* * * * *

Table 3. 2001 Trip Limits 1/ and Gear Requirements 2/ for Limited Entry Trawl Gear
Read Section IV.A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	Minor slope rockfish						
2	North		1,500 lb/ 2 months		2,000 lb/ 2 months		Closed Starting October
3	South		14,000 lb/ 2 months			25,000 lb/ 2 months	25,000 lb/ 2 months
4	Spillnose - South		8,500 lb/ 2 months	14,000 lb/ 2 months			
5	Pacific ocean perch ⁴		1,500 lb/ month	2,500 lb/ month	3,500 lb/ month		Closed Starting October
6	DTS complex - North						
7	Sablefish		5,000 lb/ 2 months		14,000 lb/ 2 months		
8	Longspine thomyhead		6,000 lb/ 2 months		6,000 lb/ 2 months		
9	Shortspine thomyhead		1,500 lb/ 2 months		1,500 lb/ 2 months		Closed Starting October
10	Dover sole		65,000 lb/ 2 months	20,000 lb/ 2 months	15,000 lb/ 2 months	500 lb/ month	
11	DTS complex - South						
12	Sablefish		8,000 lb/ 2 months		11,000 lb/ 2 months		
13	Longspine thomyhead		6,000 lb/ 2 months		6,000 lb/ 2 months		
14	Shortspine thomyhead		1,500 lb/ 2 months		1,500 lb/ 2 months		Closed Starting October
15	Dover sole		35,000 lb/ 2 months		30,000 lb/ 2 months	500 lb/ month	
16	Flatfish - North						
17	Arrowtooth flounder		20,000 lb/ trip				Small and large footrope: 5,000 lb/ trip, not to exceed 30,000 lb/ month
18	Rex Sole		No Limit				No Limit
19	Petrale Sole		No Restriction	Small footrope: 50,000 lb/month, of which no more than 15,000 lb may be petrale sole and 10,000 lb may be arrowtooth. Large footrope: arrowtooth, 15,000 lb/ trip for May and 5,000 lb/ trip for June, petrale sole, prohibited; rest included in all other flatfish; all other flatfish, 1,000 lb/ trip.	Small footrope: 45,000 lb/month, of which no more than 15,000 lb may be petrale sole, arrowtooth 7,500 lb/ trip not to exceed 30,000 lb/month. Large footrope: arrowtooth, 5,000 lb/ trip not to exceed 30,000 lb/month, petrale sole 100 lb/ trip; rest included in all other flatfish; all other flatfish, 1,000 lb/ trip.		Small footrope: 45,000 lb/month, of which no more than 15,000 lb may be petrale sole. Large footrope: all other flatfish 1,000 lb/ trip, of which no more than 100 lb/ trip may be petrale sole.
20	All other flatfish ³		Small footrope, no limit; large footrope, 1,000 lb/ trip				small and large footrope: 30,000 lb/ month. small footrope: 30,000 lb/ month, large footrope: 1,000 lb/ trip
21	Flatfish - South						
22	Arrowtooth flounder		20,000 lb/ trip	small footrope, no limit; large footrope, 5,000 lb/ trip			Small and large footrope: 5,000 lb/ trip, not to exceed 30,000 lb/ month
23	Rex Sole				No Limit		
24	Petrale Sole		No Restriction	small footrope, no limit; large footrope, included in "all other flatfish"			Small footrope: 45,000 lb/month, of which no more than 15,000 lb may be petrale sole. Large footrope: all other flatfish 1,000 lb/ trip, of which no more than 100 lb/ trip may be petrale sole.
25	All other flatfish ³		small footrope, no limit; large footrope, 1,000 lb/ trip				small footrope: 30,000 lb/ month, large footrope: 1,000 lb/ trip
26	Whiting shoreside ⁴		20,000 lb/ trip		Primary Season		20,000 lb/ trip
27	Use of small footrope bottom trawl ⁵ or midwater trawl required for landing all of the following species:						
28	Minor shelf rockfish						
29	North		300 lb/ month		1,000 lb/ month		300 lb/ month
30	South		500 lb/ month		1,000 lb/ month		500 lb/ month
31	Canary rockfish		100 lb/ month		300 lb/ month		Closed Starting October
32	Widow rockfish						
33	mid-water trawl		20,000 lb/ 2 months	10,000 lb/ 2 months	July thru October, in trips where 10,000 lb or more of whiting are landed, 2,000 lb/ month, with a combined widow/yellowtail limit of 500 lb per trip, otherwise 1,000 lb/month.		25,000 lb/ 2 months
34	small footrope trawl				1,000 lb/ month		
35	Yellowtail - North ⁶						
36	mid-water trawl		30,000 lb/ 2 months	15,000 lb/ 2 months	July thru October, in trips where 10,000 lb or more of whiting are landed, 3,000 lb/ month with a combined widow/yellowtail limit of 500 lb/ trip, otherwise 1,500 lb/month.		15,000 lb/ 2 months
37	small footrope trawl		Without flatfish, 1,500 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 2,500 lb/ trip and 30,000 lb/ 2 months.	Without flatfish, 1,500 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 7,500 lb/ trip and not to exceed 15,000 lb/ 2 months.			
38	Bocaccio - South ⁶		300 lb/ month		500 lb/ month		Closed Starting October
39	Chilipepper - South ⁶						
40	mid-water trawl				25,000 lb/ 2 months		
41	small footrope trawl				7,500 lb/ 2 months		5,000 lb/ 2 months
42	Lingcod				Retention is Prohibited ⁷		
43	Minor nearshore rockfish						
44	North				200 lb/ month		
45	South				200 lb/ month		
46	Lingcod ⁷		No retention		400 lb/ month	500 lb/ month	Closed Starting November

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N lat. to the U.S.-Canada border

"South" means 40°10' N lat. to the U.S.-Mexico border. 40°10' N lat is about 20 nm south of Cape Mendocino, CA.

2/ Gear requirements and prohibitions are explained at paragraph IV.A.(14)

3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with a trip limit.

4/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. See IV.B.(3)(c).

The 20,000 lb/ trip limit applies before and after the primary season.

5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

Midwater gear also may be used; the footrope must be bare. See paragraph IV.A.(14).

6/ Yellowtail rockfish and POP in the south, and bocaccio, and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).

7/ The size limit for lingcod is 24 inches (61 cm) total length.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4. 2001 Trip Limits^{1/} for Limited Entry Fixed Gear
Read Section IV.A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	Minor slope rockfish						
2	North		1,500 lb/ 2 months			2,000 lb/ 2 months	
3	South		14,000 lb/ 2 months			25,000 lb/ 2 months	
4	Splitnose - South	8,500 lb/ 2 months		14,000 lb/ 2 months		25,000 lb/ 2 months	
5	Pacific ocean perch 5/	1,500 lb/ month		2,500 lb/ month	3,500 lb/ month		Closed Starting October
6	Sablefish						
7	North of 36° N. lat.		300 lb/ day, 2,700 lb/ 2 months		300 lb/ day or 1 landing per week up to 900 lb, not to exceed 3,000 lb/ 2 months	300 lb/ day or 1 landing per week up to 900 lb, not to exceed 1,800 lb/ month	
8	South of 36° N. lat.			350 lb/ day, or 1 landing per week of up to 1,050 lb			
9	Longspine thornyhead	6,000 lb/ 2 months			6,000 lb/ 2 months		6,000 lb/ 2 months
10	Shortspine thornyhead	1,500 lb/ 2 months			1,500 lb/ 2 months		1,500 lb/ 2 months
11	Dover sole						
12	North	65,000 lb/ 2 months		20,000 lb/ 2 months	15,000 lb/ 2 months		7,500 lb/ month
13	South	35,000 lb/ 2 months		35,000 lb/ 2 months	30,000 lb/ 2 months		15,000 lb/ month
14	Flatfish - North						
15	Arrowtooth flounder	20,000 lb/ trip					20,000 lb/ trip
16	Petrale sole	No restriction		30,000 lb/ month for all flatfish except Dover sole	45,000 lb/month, of which no more than 15,000 lb may be petrale sole; arrowtooth no more than 7,500 lb/trip, not to exceed 30,000 lb/month.		No restriction
17	Rex sole	No limit					No limit
18	All other flatfish 2/	No limit					No limit
19	Flatfish - South						
20	Arrowtooth flounder	20,000 lb/ trip			No limit		20,000 lb/ trip
21	Petrale sole				No limit		
22	Rex sole				No limit		
23	All other flatfish 2/				No limit		
24	Whiting 3/	20,000 lb/ trip			Primary Season		20,000 lb/ trip
25	Minor shelf rockfish						
26	North	300 lb/ month			1,000 lb/ month		Closed Starting October
27	South						
28	40°10' - 34°27' N. lat.	500 lb/ month		CLOSED 4/		1,000 lb/ month	Closed Starting October
29	South of 34°27' N. lat.	CLOSED 4/		500 lb/ month			
30	Canary rockfish						
31	North	100 lb/ month			300 lb/ month		Closed Starting October
32	South						
33	40°10' - 34°27' N. lat.	100 lb/ month		CLOSED 4/			
34	South of 34°27' N. lat.	CLOSED 4/		100 lb/ month		300 lb/ month	Closed Starting October
35	Widow rockfish						
36	North				3,000 lb/ month		Closed Starting October
37	South						
38	40°10' - 34°27' N. lat.	3,000 lb/ month		CLOSED 4/			
39	South of 34°27' N. lat.	CLOSED 4/		3,000 lb/ month		3,000 lb/ month	Closed Starting October
40	Yellowtail - North 5/			1,500 lb/ month			Closed Starting October
41	Bocaccio - South 5/						
42	40°10' - 34°27' N. lat.	300 lb/ month		CLOSED 4/		500 lb/ month	Closed Starting October
43	South of 34°27' N. lat.	CLOSED 4/		300 lb/ month			
44	Chilipepper - South 5/						
45	40°10' - 34°27' N. lat.	2,500 lb/ month		CLOSED 4/		2,500 lb/ month	Closed Starting October
46	South of 34°27' N. lat.	CLOSED 4/		2,500 lb/ month			
47	Cowcod				CLOSED 4/ - All Retention is Prohibited		
48	Minor nearshore rockfish						
49	North	10,000 lb/ 2 months, no more than 4,000 lb of which may be species other than black or blue rockfish 6/		7,000 lb/ 2 months, no more than 4,000 lb of which may be species other than black or blue rockfish 6/		2,000 lb/ month, no more than 800 lb of which may be species other than black or blue rockfish	
50	South						
51	40°10' - 34°27' N. lat.	2,000 lb/ 2 months	CLOSED 4/	Shoreward of 20 fm depth, 2,000 lb/ 2		2,000 lb/ 2 months	
52	South of 34°27' N. lat.	Shoreward of 20 fm depth, 2,000 lb/ 2 months, otherwise CLOSED 4/			2,000 lb/ 2 months		3,000 lb/ 2 months
53	Lingcod 7/						
54	North		CLOSED 4/		400 lb/ month	500 lb/ month	CLOSED 4/
55	South						
56	40°10' - 34°27' N. lat.		CLOSED 4/		400 lb/ month	500 lb/ month	CLOSED 4/
57	South of 34°27' N. lat.		CLOSED 4/		400 lb/ month	500 lb/ month	CLOSED 4/

^{1/} Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border.

"South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with a trip limit.

3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. See IV.B.(3)(c).

4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7) in the time or area indicated. See IV.A.(7).

5/ Yellowtail rockfish and POP in the south, and bocaccio, and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).

6/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4).

7/ The size limit for lingcod is 24 inches (61 cm) in the north, and 26 inches (66 cm) in the south, total length.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

C. Trip limits in the Open Access Fishery

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Table 5. 2001 Trip Limits^{1/} for Open Access Gears

Read Section IV.A. NMFS Actions before using this table. (Exceptions for exempted gears at Section IV.C.)

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	Minor slope rockfish						
2	North			500 lb/ 2 months		Closed Starting in October	
3	South				5,000 lb/ 2 months		
4	Splitnose - South				200 lb/ month		
5	Pacific ocean perch 4/			100 lb/ month		Closed Starting in October	
6	Sablefish						
7	North of 36° N. lat.		300 lb/ day, 2,700 lb/ 2 months		300 lb/ day or 1 landing per week up to 800 lb, not to exceed 4,800 lb/ 2 months	300 lb/ day or 1 landing per week up to 800 lb, not to exceed 2,400 lb/ month	
8	South of 36° N. lat.				350 lb/ day		
9	Thornyheads (longspine and shortspine combined)						
10	North of 34°27' N. lat.				CLOSED 3/ - No Retention		
11	South of 34°27' N. lat.				50 lb/ day, no more than 2,000 lb/ 2 months		
12	Arrowtooth				200 lb/ month		
13	Dover sole				(included in "other" flatfish limit)		
14	Petrale sole				(included in "other" flatfish limit)		
15	Nearshore flatfish				(included in "other" flatfish limit)		
16	"Other" flatfish 2/				300 lb/ month		
17	Whiting				300 lb/ month		
18	Minor shelf rockfish						
19	North			100 lb/ month		Closed Starting October	
20	South						
21	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED 3/		200 lb/ month		Closed Starting October
22	South of 34°27' N. lat.	CLOSED 3/		200 lb/ month			
23	Canary rockfish						
24	North				50 lb/ month		Closed Starting October
25	South						
26	40°10' - 34°27' N. lat.	50 lb/ month	CLOSED 3/		50 lb/ month		Closed Starting October
27	South of 34°27' N. lat.	CLOSED 3/		50 lb/ month			
28	Widow rockfish						
29	North				3,000 lb/ month		Closed Starting October
30	South						
31	40°10' - 34°27' N. lat.	3,000 lb/ month	CLOSED 3/		3,000 lb/month		Closed Starting October
32	South of 34°27' N. lat.	CLOSED 3/		3,000 lb/ month			
33	Yellowtail - North 4/ 8/				100 lb/ month		Closed Starting October
34	Bocaccio - South 4/						
35	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED 3/		200 lb/ month		Closed Starting October
36	South of 34°27' N. lat.	CLOSED 3/		200 lb/ month			
37	Chilipepper - South 4/						
38	40°10' - 34°27' N. lat.	2,500 lb/ month	CLOSED 3/		2,500 lb/ month		Closed Starting October
39	South of 34°27' N. lat.	CLOSED 3/		2,500 lb/ month			
40	Cowcod				Closed 3/ - No Retention		
41	Minor nearshore rockfish						
42	North 6/		3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish 5/		7,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish 5/		2,000 lb/ month, no more than 800 lb of which may be species other than black or blue rockfish 5/
43	South						
44	40°10' - 34°27' N. lat.	1,800 lb/ 2 months	CLOSED 3/	Shoreward of 20 fm depth: 1,200 lb/ 2 months, otherwise CLOSED 3/		1,200 lb/2 months	3,000 lb/ 2 months
45	South of 34°27' N. lat.	Shoreward of 20 fm depth: 1,800 lb/ 2 months, otherwise CLOSED 3/	1,800 lb/ 2 months	1,200 lb/ 2 months			
46	Lingcod 7/						
47	North		CLOSED 3/		400 lb/ month	500 lb/ month	Closed Starting November
48	South						
49	40°10' - 34°27' N. lat.		CLOSED 3/		400 lb/ month	500 lb/ month	Closed Starting November
50	South of 34°27' N. lat.		CLOSED 3/		400 lb/ month	500 lb/ month	Closed Starting November

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N lat to the U.S. - Canada border

"South" means 40°10' N lat to the U.S. - Mexico border. 40°10' N lat is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with a trip limit.

3/ Closed means that it is prohibited to take, retain, possess, or land the designated species in the time or area indicated. (See IV.A. (7).)

4/ Yellowtail rockfish and POP in the south, and bocaccio, and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).

5/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4).

6/ See IV.C.(4) for limits specific to Pacific City, Oregon.

7/ The size limit for lingcod is 24 inches (61 cm) in the north, and 26 inches (66 cm) in the south, total length.

8/ See IV.C.(5) for limits specific to the salmon troll fishery.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

(a) * * *
2. In section IV., under B. *Limited Entry Fishery*, paragraphs (3) and (5) are revised, to read as follows:

(3) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp.*

(a)

(i) * * *

(A) * * *

(B) Starting May 1, 2001, through September 30, 2001: 200 lb (91 kg) per month.

(C) Starting October 2, 2001, taking and retaining, possessing or landing canary rockfish with exempted trawl gear by vessels engaged in fishing for pink shrimp is prohibited.

* * * * *

(5) Groundfish taken with troll gear by vessels engaged in fishing for salmon north of 40°10' N lat.

Beginning October 1, the trip limits in Table 5 apply to all groundfish taken with troll gear by vessels fishing for salmon.

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP and the annual specifications and management measures published at 66 FR 2338 (January 11, 2001), as amended at 66 FR 10208 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), at 66 FR 28676 (May 24, 2001), at 66 FR 35388 (July 5, 2001), and 66 FR 38162 (July 23, 2001) and are based on the most recent data available.

The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553 (b)(3)(B), as providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the groundfish cumulative landing limit period begins on October 2, 2001, and affording additional notice and opportunity for public comment would impede the agency's responsibility under the FMP, to manage groundfish fisheries to achieve OY. Increases to trip limits relieve restrictions on the public and decreases to trip limits and closures must be implemented in a timely manner to either stretch the season out as long as possible through the year or to protect overfished and depleted species. For species where cumulative landing limits have been raised, such changes would prevent a fisher from achieving the higher limit allowed during this cumulative landing limit period, thereby unnecessarily restricting

the fisher. For species where cumulative landing limits have been lowered or closed, a delay in implementing such changes would allow a fisher to achieve the pre-existing higher limits, and thus frustrate the conservation objectives of the cumulative landing limit changes, or force further reductions for the entire fleet later in the season. In short, allowing for public comment on these in-season changes and thus delaying their implementation would hinder the benefits to be obtained by making new limits effective during this cumulative landing limit period (either additional fish available to the fisher, or reduced limits to protect a species).

For these reasons, good cause also exists to waive the 30-day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3).

These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under Executive Order 12866.

Dated: October 2, 2001.

Bruce C. Morehead,

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

[FR Doc. 01-25031 Filed 10-2-01; 4:49 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013-1013-01; I.D. 092501B]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using trawl and jig gear to vessels using hook-and-line or pot gear in the BSAI. These actions are necessary to allow the 2001 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective October 2, 2001, until 2400 hours, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management

Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and at 50 CFR part 679.

The Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001 and 66 FR 37167, July 17, 2001) established the amount of the 2001 BSAI Pacific cod TAC as 188,000 metric tons (mt). Pursuant to § 679.20(a)(7)(i)(A), 3,478 mt was allocated to vessels using jig gear, 88,689 mt to vessels using hook-and-line or pot gear, and 81,733 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to catcher vessels and 50 percent to catcher/processor vessels (§ 679.20(a)(7)(i)(B)). The share of the Pacific cod TAC allocated to hook-and-line or pot gear was further allocated as follows: (1) 80 percent to catcher/processor vessels using hook-and-line gear; (2) 0.3 percent to catcher vessels using hook-and-line gear; (3) 18.3 percent to vessels using pot gear; and (4) 1.4 percent to catcher vessels less than 60 ft LOA that use either hook-and-line or pot gear (§ 679.20(a)(7)(i)(C)).

As of September 15, 2001, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that trawl catcher/processors will not be able to harvest 10,000 mt and trawl catcher vessels will not be able to harvest 14,000 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(B). Therefore, in accordance with § 679.20(a)(7)(ii)(C), NMFS apportions 24,000 mt of Pacific cod from trawl gear to vessels using hook-and-line or pot gear.

The Regional Administrator has also determined that vessels using jig gear will not harvest 3,000 mt of their Pacific cod allocation by the end of the year. Therefore, in accordance with § 679.20(a)(7)(ii)(C), NMFS is reallocating the unused amount of 3,000 mt of Pacific cod allocated to vessels using jig gear to vessels using hook-and-line or pot gear.

In accordance with § 679.20(a)(7)(ii)(C)(1), 400 mt of the combined reallocation of unused Pacific cod from trawl and jig gear is apportioned to catcher vessels using hook-and-line gear. In accordance with § 679.20(a)(7)(ii)(C)(2), the remaining combined reallocation of unused Pacific cod from trawl and jig gear, 25,600 mt,

is apportioned so that catcher/processor vessels using hook-and-line gear will receive 95 percent and vessels using pot gear will receive 5 percent of the reallocation.

The harvest specifications for Pacific cod established in the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001 and 66 FR 37167, July 17, 2001) are revised as follows: 478 mt to vessels using jig gear, 95,821 mt to catcher processor vessels using hook-and-line gear, 665 mt to catcher vessels using hook-and-line gear, 17,469 mt to pot gear, 30,867 mt to trawl catcher/processors, and 26,867 mt to trawl catcher vessels.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to allow the 2001 TAC of Pacific cod in the BSAI to be harvested constitutes good cause to waive the requirement to provide prior notice or opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to allow the 2001 TAC of Pacific

cod in the BSAI to be harvested constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is taken under 50 CFR 679.20 and is exempt from OMB review under Executive Order 12866.

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

Dated: September 28, 2001.

Bruce C. Morehead,

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

[FR Doc. 01-25030 Filed 10-2-01; 4:49 pm]

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Proposed Rules

Federal Register

Vol. 66, No. 194

Friday, October 5, 2001

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 15

RIN 3150-AG80

Debt Collection Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations concerning the procedures used to collect debts that are owed to NRC. The proposed amendment would conform NRC regulations to the legislative changes enacted in the Debt Collection Improvement Act of 1996 (DCIA) and the amended procedures presented in the Federal Claims Collection Standards (FCCS) issued by the Department of the Treasury (Treasury) and the Department of Justice (DOJ). The proposed action is intended to allow the NRC to improve its collection of debts due the United States.

DATES: The comment period expires December 19, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm Federal workdays (Telephone 301-415-1678).

Comments may also be submitted via the NRC's interactive rulemaking Web site at (<http://ruleforum.llnl.gov>). This site provides the capability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, 301-415-5905 (e-mail

CAG@nrc.gov). Comments received may also be viewed and downloaded electronically via this interactive rulemaking website.

With the exception of restricted information, documents created or received at the NRC, after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209 or 301-415-4737 pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Leah Tremper, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852-2738, Telephone 301-415-7347.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Section by Section Analysis
- III. Plain Language
- IV. Voluntary Consensus Standards
- V. Finding of No Significant Environmental Impact
- VI. Paperwork Reduction Act
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Certification
- IX. Backfit Analysis

I. Background

On August 9, 1990 (55 FR 32375), the Nuclear Regulatory Commission (NRC) published a final rule concerning debt collection procedures. Since then, the Debt Collection Improvement Act (DCIA) of 1996 (Pub. L. 104-134), was enacted on April 26, 1996. This Act enhances debt collection Government-wide. The purposes of this Act are—

- (1) To maximize collections of delinquent debts owed to the Government by ensuring quick action to enforce recovery of debts and the use of all appropriate collection tools,
- (2) To minimize the costs of debt collection by consolidating related functions and activities and utilizing interagency teams,
- (3) To reduce losses arising from debt management activities by requiring proper screening of potential borrowers, aggressive monitoring of all accounts, and sharing of information within and among Federal agencies,

(4) To ensure that the public is fully informed of the Federal Government's debt collection policies and that debtors are cognizant of their obligations to repay amounts owed to the Federal government,

(5) To ensure that debtors have all appropriate due process rights, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

(6) To encourage agencies, when appropriate, to sell delinquent debt, particularly debts with underlying collateral, and

(7) To rely on the experience and expertise of private sector professionals to provide debt collection services to Federal agencies.

This Act provides that any nontax debt or claim owed to the United States that has been delinquent for a period of 180 days shall be referred to the Treasury or Treasury-designated collection center for appropriate action to collect or terminate collection action on the debt or claim. The DCIA of 1996 has expanded the collection tools available through-administrative offset.

One of the most significant provisions of the DCIA of 1996 is the requirement that most agency debt over 180 days delinquent be referred to the Department of the Treasury for collection. The DCIA of 1996 provides Treasury with new collection tools, including the authority to offset any Federal agency's payment to a vendor to satisfy that vendor's debt to a different Federal agency. This capability can improve our collection efforts as follows:

- (1) It limits the amount of time spent on trying to collect from delinquent debtors by referring a debt to Treasury when it becomes 180 days delinquent;
- (2) It provides a powerful collection tool, offset of Federal payments, that is otherwise unavailable to NRC; and
- (3) It puts the debt in the hands of a professional staff that is dedicated to handling collections.

The Federal Claims Collection Standards (FCCS) (31 CFR Chapter IX and parts 900, 901, 902, 903, and 904) were revised on November 22, 2000 (65 FR 70390). The revised FCCS clarify and simplify Federal debt collection procedures and reflect changes under

the DCIA of 1996 and the General Accounting Office Act of 1996. The revised FCCS reflect legislative changes to Federal debt collection procedures enacted under the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321-358, as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. The revised FCCS provide agencies with greater latitude to adopt agency-specific regulations, tailored to the legal and policy requirements applicable to the various types of Federal debt, to maximize the effectiveness of Federal debt collection procedures. The Secretary of the Treasury has been added as a co-promulgator of the FCCS in accordance with section 31001(g)(1)(C) of the DCIA of 1996. The Comptroller General has been removed as a co-promulgator in accordance with section 115(g) of the General Accounting Office Act of 1996, Public Law 104-316, 110 Stat. 3826 (October 19, 1996), (65 FR 70390 (2000)). The Department of the Treasury and DOJ have published the revised FCCS as a joint final rule under new Chapter IX, Title 31, Code of Federal Regulations. The revised FCCS supersede the current FCCS codified at 4 CFR parts 101-105.

The revised FCCS prescribe standards for Federal agency use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific Federal agency statutes or regulations apply to such activities, or as provided for by Title 11 of the United States Code when the claims involve bankruptcy. The revised FCCS also prescribe standards for referring debts to the Department of Justice for litigation.

II. Section by Section Analysis

Section 15.1 Application

The DCIA of 1996 requires all Federal agencies to refer delinquent debt that is over 180 days old to Treasury for offset and collection. This section would be amended to reflect that the NRC is not limited to collection remedies contained in the revised FCCS, and eliminate the GAO's role as co-promulgator of the FCCS.

Section 15.2 Definitions

This section would be amended to expand the definition of "claim or debt" to conform with the DCIA of 1996. Other definitions such as "administrative wage garnishment," "cross-servicing," "Federal agencies,"

"recoupment," "tax refund offset," "Treasury," and "withholding order" have been added to conform to the definitions in the DCIA of 1996.

Section 15.5 Claims That Are Covered

This section would be amended to include reference to Executive Order 12146, which references interagency resolution of disputes, to exclude specifically from coverage a claim under the Internal Revenue Code of 1986, and to add claims that involve bankruptcy are covered by Title 11 of the United States Code.

Section 15.7 Monetary Limitation on NRC's Authority

This section would be amended to increase NRC's authority to compromise a claim or to terminate or suspend collection action on a claim covered by these procedures to \$100,000 to reflect the ceiling change established by 31 U.S.C. 3711(a)(2) and to delete reference to the GAO.

Section 15.8 Information Collection Requirements: OMB Approval

This section would be added to state that this part contains no information collection requirements and is not subject to the requirements of the Paperwork Reduction Act.

Section 15.9 No Private Rights Created

This section would be amended to change the section heading from "Omission not a defense" to "No private rights created" and delete the reference to 4 CFR part 101-105 and substitute the reference to 31 CFR Chapter IX, parts 900-904.

Section 15.11 Form of Payment

This section would be amended to change the section heading from "Conversion claims" to "Form of payment" and allow claims to be paid in money or property, if contractually authorized.

Section 15.20 Aggressive Agency Collection Action

This section would be added to include DCIA debt collection provisions for referral of delinquent debt to Treasury for cross-servicing, and mandate cooperation among Federal agencies as required by the DCIA of 1996.

Section 15.21 Written Demand for Payment

This section would be amended to change the number of demand letters to be sent for each debt from three to two. The revised FCCS allows agencies latitude to adopt agency-specific

regulations and this change in the number of demand letters reflects the latitude allowed. In addition, the noticing requirements would be amended to include the name, address and phone number of an NRC contact for each demand letter, to delete the reference to 4 CFR 102.13 and 102.5 and to substitute the reference to 31 CFR Chapter IX part 901.9 and 901.4, and to add procedures to follow when a bankruptcy petition is filed by a debtor. The DCIA of 1996 allows agencies greater latitude to adopt agency specific regulations and the change in the number of demand letters reflects the latitude allowed.

Section 15.23 Telephone or Internet Inquiries and Investigations

This section would be amended to include the use of the internet as a means of contacting a debtor.

Section 15.26 Reporting Claims

The section heading would be changed from "Use of consumer reporting agencies" to "Reporting claims." This section would be amended to include the due process notification to the individual debtor with the second demand letter, and delete the requirement for sending at least one demand letter by registered or certified mail.

Section 15.29 Suspension or Revocation of License

This section would be amended in its entirety to:

- (1) State that the suspension or revocation of a license, permit, or approval is also applicable to Federal programs or activities that are administered by the states on behalf of the Federal government; and
- (2) Include that NRC will seek legal advice from its Office of the General Counsel for those debts that involve bankruptcy before suspending or revoking a license.

Section 15.32 Contracting for Collection Services

This section would be amended to include that NRC may contract for collection services in order to recover delinquent debts if the debts are not subject to the DCIA requirement to transfer debts to Treasury for debt collection services and delete the reference to 4 CFR 102.6 and substitute the reference to 31 CFR Chapter IX, part 901.5.

Section 15.33 Collection by Administrative Offset

This section would be amended in its entirety to include several new debt

collection procedures under the DCIA of 1996, including but not limited to—

(1) Transfer or referral of delinquent debt to the Department of the Treasury or Treasury-designated debt collection center for collection, known as "cross-servicing;"

(2) Centralized administrative offset by disbursing officials;

(3) Credit bureau reporting; and

(4) Prohibition against extending Federal financial assistance in the form of a loan or loan guarantee to delinquent debtors.

Included in this section are NRC administrative offset procedures to be followed prior to initiating centralized and non-centralized offsets.

Section 15.35 Payments

This section would be amended to delete confess-judgment notes, delete how payments are to be applied when there are multiple debts, include credit cards as a payment method, and change the address where payments are to be sent.

Section 15.37 Interest, Penalties, and Administrative Charges

This section would be amended to delete reference to 4 CFR 102.2 and 102.13 and substitute the reference to 31 CFR Chapter IX, part 901.2 and 901.9 and add that NRC is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with common law.

Section 15.39 Bankruptcy Claims

This section would be added to include procedures the NRC would follow when notified that a debtor has filed for bankruptcy protection.

Section 15.41 When a Claim May Be Compromised

This section would be amended to delete reference to the GAO, clarify that the FCCS applies to debt referred to Treasury for collection (cross-servicing), and include procedures for referring claims that exceed \$100,000 to the DOJ for acceptance of the compromise offer.

Section 15.43 Reasons for Compromising a Claim

This section would be amended to delete reference to 4 CFR 103 and 103.4 and substitute the reference to 31 CFR Chapter IX, part 902 and 902.2.

Section 15.45 Consideration of Tax Consequences to the Government

This section heading would be changed from "Restrictions on the compromise of a claim" to "Consideration of tax consequences to the Government." This section would be

amended to allow acceptance of a percentage of a debtor's profits or stock in a debtor corporation in compromise of a claim and reword the remainder of the section.

Section 15.49 Mutual Release of the Debtor and the Government

This section would be added to include the requirement that compromises be implemented by means of mutual release, when appropriate.

Section 15.51 When Collection Action May Be Suspended or Terminated

This section would be amended to include procedures for suspending or terminating collection action on claims over \$100,000 and to eliminate GAO's debt collection role.

Section 15.53 Reasons for Suspending Collection Action

This section would be amended to prescribe factors to consider when determining that collection action should be suspended, and when collection activity should be suspended pending waiver or administrative review, and to include consideration of the impact of the Bankruptcy Code in bankruptcy cases.

Section 15.55 Reasons for Terminating Collection Action

This section would be amended to combine paragraphs (a) through (c) and add that NRC may terminate collection activity on a debt that has been discharged in bankruptcy.

Section 15.57 Termination of Collection Action

This section would be amended to add that termination does not preclude retention of debt record for purposes of selling the debt, pursuing collection at a subsequent date, offsetting against future income or assets, and screening future applicants for prior indebtedness; and add that collection activity may be terminated for debts that have been discharged in bankruptcy.

Section 15.60 Discharge of Indebtedness; Reporting Requirements

This section would be added to require the NRC to take all appropriate collection actions and make a determination that further collection action is not warranted before making a determination to discharge a debt, provide that the NRC may not discharge a debt until the requirements of 31 U.S.C. 3711(i) (sale of debt) have been met, and provide that the NRC will report discharge of debt to the IRS on Form 1099-C.

Section 15.61 Prompt Referral

This section would be amended to include revised procedures for referring debts that are over \$1,000,000 to the DOJ for litigation, include requirements that the NRC refrain from debtor contact after referral to DOJ, and add provisions that DOJ shall notify the NRC of any payments received from the debtor.

Section 15.65 Referral of a Compromise Offer

This section would be amended to delete reference to the GAO and include the requirement that a written offer of compromise that is substantial in amount be referred to DOJ using a Claims Collection Litigation Report (CCLR) accompanied by supporting data and particulars concerning the debt.

Section 15.67 Referral to the Department of Justice

This section would be amended to add the requirement that certified copies of documents be forwarded to DOJ with litigation referrals, increase the minimum amount of claims to be referred to DOJ to \$2,500, and add exception for claims being referred solely to secure a judgment for lien filing purposes.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC is amending Part 15 to reflect the current requirements of the revised Debt Collection Improvement Act of 1996 and the revised Federal Claims Collection Standards. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Finding of No Significant Environmental Impact

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This proposed rule is necessary to conform the NRC regulations to the amended procedures presented in the Federal Claims Collection Standards. Amending the procedures that the NRC uses to collect debts which are owed to it will not have any radiological environmental impact offsite and no impact on occupational radiation exposure onsite. The rule does not affect nonradiological plant effluents and has no other environmental impact. The environmental assessment and finding of no significant impact, on which this determination is based, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm except on Federal holidays.

VI. Paperwork Reduction Act

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

The proposed rule will conform NRC procedures for collecting debts owed it with the amended procedures presented in the Federal Claims Collection Standards and the revised Debt Collection Improvement Act of 1996, and, as such, will not have a significant impact on state and local governments and geographical regions; health, safety, and the environment; nor will it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this proposed rule.

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis has not been prepared. Interest and late payment charges imposed on a small entity will ordinarily not exceed \$100 per year. This rule affects small entities

billed for byproduct materials inspection fees, byproduct materials licensing fees, and materials annual fees established under 10 CFR 170.31, Category 3, and 10 CFR 171.16, Category 3, and for Freedom of Information Act processing costs. The NRC issues approximately 1,100 billings annually to small entities including physicians in private practice, small hospitals, universities, small consulting firms, public interest groups, and other entities involved with radiography and research. The total annual billing to any one small entity is \$2,300 per fee category. Past experience shows that 97–98% of billings are paid within 90 days after the billing date. The late payment charges imposed for a small entity that pays the debt of \$2,300, 90 days after the billing date, will be \$84.12 assuming a Treasury annual interest rate of 6%, penalty at 6%, and administrative charges at \$5 per month.

The rule allows a small entity to pay a debt on an installment basis if it is unable to pay a debt in full prior to the due date (ordinarily 30 days after the billing date). This arrangement requires the payment of interest on the unpaid debt and the administrative charge for each month the installment is in effect. The annual interest charges imposed on a small entity will be less than \$140 assuming a maximum billing of \$2,300 paid in 12 monthly installments at an annual interest rate of 6% and \$60 in administrative charges.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109 does not apply to this proposed rule; therefore, a backfit analysis is not required for this proposed rule because these amendments are mandated by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–358 (April 26, 1996)).

List of Subjects in 10 CFR Part 15

Administrative practice and procedures, debt collection.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 15.

PART 15—DEBT COLLECTION PROCEDURES

1. The authority citation for Part 15 is revised to read as follows:

Authority: Secs. 161, 186, 68 Stat. 948, 955, as amended (42 U.S.C. 2201, 2236); sec. 201, 88 Stat. 1242, as amended (42 U.S.C.

5841); sec. 1, Pub. L. 97–258, 96 Stat. 972 (31 U.S.C. 3713); sec 5, Pub. L. 89–508, 80 Stat. 308, as amended (31 U.S.C. 3716); Pub. L. 97–365, 96 Stat. 1749 (31 U.S.C. 3719); Federal Claims Collection Standards, 31 CFR Title IX, parts 900–904; 31 U.S.C. Secs. 3701, 3716; 31 CFR Sec 285; 26 U.S.C. Sec 6402(d); 31 U.S.C. Sec. 3720A; 26 U.S.C. Sec. 6402(c); 42 U.S.C. Sec. 664; Pub. L. 104–134, as amended (31 U.S.C. 3713); 5 U.S.C. 5514; Executive Order 12146 (3 CFR 1980 Comp. pp. 409–412); Executive Order 12988 (3 CFR 1996 Comp., pp. 157–163).

2. In § 15.1 paragraphs (a)(1) and (a)(3) are revised and paragraph (c) is added to read as follows:

§ 15.1 Application.

(a) * * *

(1) Collects, compromises, suspends, offsets, and terminates collection action for claims:

* * * * *

(3) Refers unpaid claims over 180 days delinquent to Treasury for offset and collection and to the DOJ for litigation.

* * * * *

(c) The NRC is not limited to collection remedies contained in the revised Federal Claims Collection Standards (FCCS). The FCCS is not intended to impair common law remedies.

3. In § 15.2, the definition of *Claim* and *debt* is revised, and the definitions of *Administrative wage garnishment*, *Cross-servicing*, *Federal agencies*, *Recoupment*, *Tax refund*, *Treasury*, and *Withholding order*, are added in alphabetical order to read as follows:

§ 15.2 Definitions.

* * * * *

Administrative wage garnishment is the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Claim and *debt* are used synonymously to refer to an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms *claim* and *debt* include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

Cross-servicing means that the Department of the Treasury or another

debt collection center is taking appropriate debt collection action on behalf of one or more Federal agencies or a unit or subagency thereof.

Federal agencies include agencies of the executive, legislative, and judicial branches of the Government, including Government corporations.

Recoupment is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

Treasury as used in 10 CFR Part 15 means the Department of the Treasury.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body.

4. In § 15.5, paragraphs (b)(4) and (b)(5) are revised and (b)(7) is added to read as follows:

§ 15.5 Claims that are covered.

(4) A claim under the Internal Revenue Code of 1986.

(5) A claim between Federal agencies. Federal agencies should attempt to resolve interagency claims as referenced in Executive Order 12146 (3 CFR, 1980 Comp., pp. 409-412).

(7) A claim involving bankruptcy is covered by Title 11 of the United States Code.

5. In § 15.7, paragraphs (a) and (b) are revised to read as follows:

§ 15.7 Monetary limitation on NRC's authority.

(a) Have not been referred to another Federal Agency for further collection actions; and

(b) Do not exceed \$100,000 (exclusive of interest, penalties, and administrative charges) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise or suspension or termination of collection activity.

6. Section 15.8 is added to read as follows:

§ 15.8 Information Collection Requirements: OMB approval.

This part contains no information collection requirements, and therefore, is not subject to the requirements of the

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

7. Section 15.9 is amended by revising the section heading and paragraph (a) to read as follows:

§ 15.9 No private rights created.

(a) The failure of NRC to include in this part any provision of the Federal Claims Collection Standards, 31 CFR Chapter IX, parts 900-904, does not prevent the NRC from applying these provisions.

8. Section 15.11 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 15.11 Form of payment.

(a) The return of specific property; or
(b) The performance of specific services.

9. Section § 15.20 is added under Subpart B to read as follows:

§ 15.20 Aggressive agency collection activity.

(a) The NRC shall take aggressive action to collect all debts. These collection activities will be undertaken promptly and follow-up action will be taken as appropriate. These regulations do not require the Department of Justice (DOJ), the Department of the Treasury (Treasury), or any other Treasury-designated collection center to duplicate collection activities previously undertaken by NRC.

(b) Debt referred or transferred to Treasury or to a Treasury-designated debt collection center under the authority of 31 U.S.C. 3711(g) must be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of the debts.

(c) The NRC shall cooperate with other agencies in their debt collection activities.

(d) The NRC will consider referring debts that are less than 180 days delinquent to Treasury or to a Treasury-designated debt collection center to accomplish efficient, cost-effective debt collection. Referrals to debt collection centers are at the discretion of, and for a time period acceptable to, Treasury.

(e) The NRC shall transfer any debt that has been delinquent for 180 days or more to Treasury so that it may take appropriate action to collect the debt or terminate collection actions. This requirement does not apply to any debt that—

(1) Is in litigation or foreclosure;
(2) Will be disposed of under an approved asset sale program;

(3) Has been referred to a private collection contractor for a period of time acceptable to Treasury;

(4) Is at a debt collection center for a period of time acceptable to Treasury;

(5) Will be collected under internal offset procedures within 3 years after the date the debt first became delinquent; or

(6) Is exempt from this requirement based on a determination by Treasury that exemption for a certain class of debt is in the best interest of the United States.

(f) Agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

10. In § 15.21 paragraphs (a)(5), (a)(6), the introductory text of paragraph (b), paragraphs (b)(3)(ii), (b)(3)(iii), and (b)(3)(vi) are revised and paragraphs (a)(7) and (e) are added to read as follows:

§ 15.21 Written demands for payment.

(5) The applicable standards for assessing interest, penalties, and administrative costs under 31 CFR Chapter IX, 901.9;

(6) The applicable policy for reporting the delinquent debt to consumer reporting agencies; and

(7) The name, address, and phone number of a contact person or office within the NRC will be included with each demand letter.

(b) The NRC shall normally send two demand letters to debtors. The initial demand letter will be followed approximately 30 days later with a second demand letter, unless circumstances indicate that alternative remedies better protect the Government's interest, that the debtor has explicitly refused to pay, or that sending a further demand letter is futile. Depending upon the circumstances, the first and second demand letters may—

(3) (ii) The NRC may report debts to credit bureaus, refer debts to debt collection centers and collection agencies for cross-servicing (including wage garnishment), tax refund offset, administrative offset, and litigation. Any eligible debt that is delinquent for 180 days or more will be transferred to the Department of the Treasury for collection. Credit bureau reporting for transferred debts will be handled by Treasury or a Treasury-designed center.

(iii) Possible reporting of the delinquent debt to consumer reporting agencies in accordance with the guidance and standards contained in 31 CFR Chapter IX, part 901.4.

* * * * *

(vi) The right to refer the claim to DOJ for litigation.

* * * * *

(e) When the NRC learns that a bankruptcy petition has been filed with respect to a debtor, the NRC will cease collection action immediately unless it has been determined that under 11 U.S.C. 362, the automatic stay has been lifted or is no longer in effect.

11. In § 15.23, paragraph (a) is revised to read as follows:

§ 15.23 Telephone or internet inquiries and investigations.

(a) If a debtor has not responded to one or more demands, the NRC shall make reasonable efforts by telephone or internet to determine the debtor's intentions.

* * * * *

12. Section 15.26 is amended by revising the section heading and paragraph (a)(2), removing paragraph (a)(3), and redesignating paragraphs (a)(4) and (a)(5) as (a)(3) and (a)(4).

§ 15.26 Reporting claims.

(a) * * *

(2) The NRC has included a notification in the second written demand (see § 15.21(b)) to the individual debtor stating—

(i) That the payment of the debt is delinquent;

(ii) That within not less than 60 days after the date of the notification, the NRC intends to disclose to a consumer reporting agency that the individual debtor is responsible for the debt;

(iii) The specific information to be disclosed to the consumer reporting agency; and

(iv) That the debtor has a right to a complete explanation of the debt (if that has not already been given), to dispute information in NRC records about the debt, and to request reconsideration of the debt by administrative appeal or review of the debt.

* * * * *

13. Section 15.29 is revised to read as follows:

§ 15.29 Suspension or revocation of license.

In non-bankruptcy cases, the NRC may suspend or revoke any license, permit, or approval which the NRC has granted to the debtor for any inexcusable, prolonged, or repeated failure of the debtor to pay a delinquent debt. Before suspending or revoking any

license, permit, or approval for failure to pay a debt, the NRC shall issue to the debtor (by certified mail) an order or a demand for information as to why the license, permit, or approval should not be suspended or revoked. The NRC shall allow the debtor no more than 30 days to pay the debt in full, including applicable interest, penalties, and administrative costs of collection of the delinquent debt. The NRC may revoke the license, permit, or approval at the end of this period. If a license is revoked under authority of this part, a new application, with appropriate fees, must be made to the NRC. The NRC may not consider an application unless all previous delinquent debts of the debtor to the NRC have been paid in full. The suspension or revocation of a license, permit, or approval is also applicable to Federal programs or activities that are administered by the states on behalf of the Federal government to the extent that they affect the Federal government's ability to collect money or funds owed by debtors. In bankruptcy cases, before advising the debtor of NRC's intention to suspend or revoke licenses, permits, or approvals, the NRC will seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code which may restrict such action.

14. Section 15.32 is revised to read as follows:

§ 15.32 Contracting for collection services.

The NRC may contract for collection services in order to recover delinquent debts only if the debts are not subject to the DCIA requirement to transfer debts to Treasury for debt collection services, e.g. debts that are less than 180 days delinquent. However, the NRC retains the authority to resolve disputes, compromise claims, suspend or terminate collection action, and initiate enforced collection through litigation. When appropriate, the NRC shall contract for collection services in accordance with the guidance and standards contained in 31 CFR Chapter IX, parts 900–904.

15. Section 15.33 is revised to read as follows:

§ 15.33 Collection by administrative offset.

(a) *Application.*

(1) The NRC may administratively undertake collection by centralized offset on each claim which is liquidated or certain in amount in accordance with the guidance and standards in 31 CFR Chapter IX, parts 900–904 and 5 U.S.C. 5514.

(2) This section does not apply to:

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or their applicable statutory authority.

(4) Unless otherwise provided by law, the NRC may not initiate administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known to the NRC, or collection of "approval" fees has been deferred under 10 CFR part 170. If the collection of "approval" fees has been deferred, the ten-year period begins to run at the end of the deferral period.

(5) In bankruptcy cases, the NRC will seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code on pending or contemplated collections by offset.

(b) *Mandatory centralized offset.*

(1) The NRC is required to refer past due, legally enforceable, nontax debts that are over 180 days delinquent to Treasury for collection by centralized administrative offset. A debt is legally enforceable if there has been a final NRC determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Debts that are less than 180 days delinquent also may be referred to Treasury for this purpose.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to Treasury as described in paragraph(b)(1) of this section must be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Federal disbursing officials will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice must include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency (NRC) requesting the offset, and a contact point within NRC who will respond to questions regarding the offset.

(c) *NRC administrative offset.*

(1) Before referring a delinquent debt to Treasury for administrative offset, the NRC adopts the following administrative offset procedures:

(i) Offsets may be initiated only after the debtor—

(A) Has been sent written notice of the type and amount of the debt, the intention of the NRC to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(ii) The debtor has been given—

(A) The opportunity to inspect and copy NRC records related to the debt;

(B) The opportunity for a review within the NRC of the determination of indebtedness; and

(C) The opportunity to make a written agreement to repay the debt.

(iii) The procedures set forth in paragraph (c)(1)(i) of this section may be omitted when—

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) The NRC first learns of the existence of the amount owed by the debtor when there is insufficient time

before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. This applies to non-centralized offsets conducted under paragraph (d) of this section. When prior notice and an opportunity for review are omitted, the NRC shall give the debtor notice and an opportunity for review as soon as practicable and shall refund any money ultimately found not to have been owed to the NRC.

(iv) When an agency previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (10 CFR Chapter IX, part 901.2), the NRC need not duplicate the notice and review opportunities before administrative offset may be initiated.

(2) When referring delinquent debts to Treasury, the NRC shall certify, in a form acceptable to Treasury, that:

(i) The debt is past due and legally enforceable; and

(ii) The NRC has complied with all due process requirements under 31 U.S.C. 3716(a) and the NRC's regulations.

(3) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Treasury shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the head of the payment-certifying or authorizing agency. Also, the Treasury may exempt other classes of payments from centralized offset upon the written request of the head of the payment-certifying or authorizing agency.

(4) Benefit payments made under the Social Security Act (42 U.S.C. 301 *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921 *et seq.*), and any law administered by the Railroad Retirement Board (other than tier 2 benefits), may be offset only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget (31 CFR 285.4).

(5) In accordance with 31 U.S.C. 3716(f), the Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from the NRC that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (b)(5) of this section will satisfy this requirement. If a waiver is granted, only the Data Integrity Board of

the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(d) *Non-centralized administrative offset.*

(1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that NRC would conduct, at its discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable, nontax delinquent debts may be collected through non-centralized administrative offset. In these cases, the NRC may make a request directly to a payment-authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, the NRC will request the Office of Personnel Management (OPM) to offset a Federal employee's lump sum payment upon leaving Government service to satisfy an unpaid advance.

(2) Before requesting Treasury to conduct a non-centralized administrative offset, the NRC adopts the following procedures, which provide that such offsets may occur only after:

(i) The debtor has been provided due process as set forth in paragraph (c)(1) of this section; and

(ii) The Treasury has received written certification from NRC that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the NRC has fully complied with its regulations concerning administrative offset.

(3) Treasury shall comply with offset requests by NRC to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the Treasury's program, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(4) When collecting multiple debts by non-centralized administrative offset, the NRC will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(e) *Requests to OPM to offset a debtor's anticipated or future benefit payment under the Civil Service Retirement and Disability Fund.* Upon

providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (c)(1) of this section, the NRC will request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801-831.1808. Upon receipt of such a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

(f) *Review requirements.* (1) For purposes of this section, whenever the NRC is required to afford a debtor a review within the agency, the NRC shall provide the debtor with a reasonable opportunity for an oral hearing in accordance with 10 CFR 16.9, when the debtor requests reconsideration of the debt, and the NRC determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the NRC should carefully document all significant matters discussed at the hearing.

(3) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity, and the NRC has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(4) In those cases in which an oral hearing is not required by this section, the NRC shall accord the debtor a "paper hearing," that is, a determination of the request for reconsideration based upon a review of the written record.

16. In § 15.35, paragraph (b), the introductory text of paragraph (c), and paragraph (c)(1) are revised to read as follows:

§ 15.35 Payments.

* * * * *

(b) Payment by installment. If a debtor furnishes satisfactory evidence of inability to pay a claim in one lump sum, payment in regular installments may be arranged. Evidence may consist of a financial statement or a signed statement that the debtor's application for a loan to enable the debtor to pay the

claim in full was rejected. Except for a claim described in 5 U.S.C. 5514 and codified in 10 CFR part 16, all installment payment arrangements must be in writing and require the payment of interest and administrative charges.

(1) Installment note forms may be used. The written installment agreement must contain a provision accelerating the debt payment in the event the debtor defaults. If the debtor's financial statement discloses the ownership of assets which are free and clear of liens or security interests, or assets in which the debtor owns an equity, the debtor may be asked to secure the payment of an installment note by executing a Security Agreement and Financing Statement transferring to the United States a security interest in the asset until the debt is discharged.

(2) If the debtor owes more than one debt, the NRC will apply the payment to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case.

(c) To whom payment is made. Payment of a debt is made by check, electronic transfer, draft, credit card, or money order and should be payable to the United States Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, P.O. Box 954514, St. Louis, MO. 63195-4514, unless payment is—

(1) Made pursuant to arrangements with DOJ;

* * * * *

17. In § 15.37, paragraphs (a) and (b) are revised and paragraph (l) is added to read as follows:

§ 15.37 Interest, penalties, and administrative costs.

(a) The NRC shall assess interest, penalties, and administrative costs on debts owed to the United States Government in accordance with the guidance provided under the Federal Claims Collection Standards, 31 CFR Chapter IX, part 901.9.

(b) Before assessing any charges on delinquent debt, the NRC shall mail or hand-deliver a written notice to the debtor explaining its requirements concerning these charges under 31 CFR Chapter IX, part 901.2 and 901.9, except where these charges are included in a contractual or repayment agreement.

* * * * *

(l) The NRC is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with common law.

18. Section 15.39 is revised to read as follows:

§ 15.39 Bankruptcy claims.

When the NRC learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the NRC will immediately seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the NRC determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, collection activity against the debtor will in most cases stop immediately.

(a) After seeking legal advice from its Office of the General Counsel, a proof of claim usually will be filed with the bankruptcy court or the Trustee.

(b) If the NRC is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(c) Offset is stayed in most cases by the automatic stay. However, the NRC will seek legal advice from its Office of the General Counsel to determine whether its payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. The NRC will seek legal advice from its Office of the General Counsel to determine if recoupment is available.

19. Section 15.41 is revised to read as follows:

§ 15.41 When a claim may be compromised.

(a) The NRC may compromise a claim not in excess of the monetary limitation if it has not been referred to DOJ for litigation.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds \$100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the DOJ. The NRC will evaluate the compromise offer, using the factors set forth in this part. If an offer to compromise any debt in excess of \$100,000 is acceptable to the NRC, the NRC shall refer the debt to the Civil Division or other appropriate litigating division in the DOJ using a CCLR. The referral must include appropriate financial information and a recommendation for the acceptance of the compromise offer. Justice Department approval is not required if the compromise offer is rejected by NRC.

20. In § 15.43, paragraphs (c) and (d) are revised to read as follows:

§ 15.43 Reasons for compromising a claim.

* * * * *

(c) The cost of collecting the claim does not justify the enforced collection of the full amount. The NRC shall apply this reason for compromise in accordance with the guidance in 31 CFR Chapter IX, part 902.2.

(d) The NRC shall determine the debtor's inability to pay, the Government's ability to enforce collection, and the amounts that are acceptable in compromise in accordance with the Federal Claims Collection Standards, 31 CFR Chapter IX, part 902.

* * * * *

21. Section 15.45 is revised to read as follows:

§ 15.45 Consideration of tax consequences to the Government.

(a) The NRC may accept a percentage of a debtor's profits or stock in a debtor corporation in compromise of a claim. In negotiating a compromise with a business concern, the NRC should consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on reporting requirements, see § 15.60.

(b) When two or more debtors are jointly and severally liable, the NRC will pursue collection activity against all debtors, as appropriate. The NRC will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible. The NRC will ensure that a compromise agreement with one debtor does not release the NRC's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

22. Section 15.49 is added to read as follows:

§ 15.49 Mutual releases of the debtor and the Government.

(a) In all appropriate instances, a compromise that is accepted by NRC should be implemented by means of a mutual release.

(1) The debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount.

(2) The Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction held by the debtor.

(b) If a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

23. Section 15.51 is revised to read as follows:

§ 15.51 When collection action may be suspended or terminated.

The NRC may suspend or terminate collection action on a claim not in excess of the monetary limitation of \$100,000 or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any of the debt has not been referred to the DOJ for litigation. If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the DOJ. If the NRC believes that suspension or termination of any debt in excess of \$100,000 may be appropriate, the NRC shall refer the debt to the Civil Division or other appropriate litigating division in the DOJ, using the CCLR. The referral should specify the reasons for the NRC's recommendation. If, prior to referral to the DOJ, the NRC determines that a debt is plainly erroneous or clearly without legal merit, the NRC may terminate collection activity, regardless of the amount involved, without obtaining DOJ concurrence.

24. Section 15.53 is revised to read as follows:

§ 15.53 Reasons for suspending collection action.

The NRC may suspend collection activity when:

- (a) The NRC cannot locate the debtor;
- (b) The debtor's financial condition is not expected to improve; or
- (c) The debtor has requested a waiver or review of the debt.

(d) Based on the current financial condition of the debtor, the NRC may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and:

- (1) The applicable statute of limitations has not expired; or
- (2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for

litigation of claims, with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(e)(1) The NRC shall suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt, if the statute under which the request is sought prohibits the NRC from collecting the debt during that time.

(2) If the statute under which the request is sought does not prohibit collection activity pending consideration of the request, the NRC may use discretion, on a case-by-case basis, to suspend collection. Further, the NRC ordinarily should suspend collection action upon a request for waiver or review, if the NRC is prohibited by statute or regulation from issuing a refund of amounts collected prior to NRC consideration of the debtor's request. However, the NRC should not suspend collection when the NRC determines that the request for waiver or review is frivolous or was made primarily to delay collection.

(f) When the NRC learns that a bankruptcy petition has been filed with respect to a debtor, in most cases, the collection activity on a debt must be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless the NRC can clearly establish that the automatic stay has been lifted or is no longer in effect. The NRC should seek legal advice immediately from its Office of the General Counsel and, if legally permitted, take the necessary steps to ensure that no funds or money are paid by the NRC to the debtor until relief from the automatic stay is obtained.

25. Section 15.55 is revised to read as follows:

§ 15.55 Reasons for terminating collection action.

The NRC may terminate collection activity when:

- (a) The NRC is unable to collect any substantial amount through its own efforts or through the efforts of others;
- (b) The NRC is unable to locate the debtor;
- (c) Costs of collection are anticipated to exceed the amount recoverable;
- (d) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(e) The debt cannot be substantiated; or

(f) The debt against the debtor has been discharged in bankruptcy.

26. Section 15.57 is revised to read as follows:

§ 15.57 Termination of collection action.

(a) Before terminating collection activity, the NRC should have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude the NRC from retaining a record of the account for purposes of:

(1) Selling the debt, if the Treasury determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time of termination of collection activity; or

(4) Screening future applicants for prior indebtedness.

(b) Generally, the NRC will terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. However, the NRC may continue collection activity, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization.

27. Section 15.59 is revised to read as follows:

§ 15.59 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, the NRC may refer debts for litigation, although termination of collection activity may be appropriate.

28. Section 15.60 is added to read as follows:

§ 15.60 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), the NRC shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset; tax refund offset; Federal salary offset; referral to Treasury, Treasury-designated debt collection centers, or private collection contractors; credit bureau reporting; wage garnishment; litigation; and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection

activity under § 15.55 and § 15.57 and is governed by the Internal Revenue Code.

When collection action on a debt is suspended or terminated, the debt remains delinquent, and further collection action may be pursued at a later date. When the NRC discharges a debt in full or in part, further collection action is prohibited. Therefore, the NRC will make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, the NRC must terminate debt collection action.

(b) Section 3711(i), title 31, United States Code, requires agencies to sell a delinquent nontax debt upon termination of collection action if Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), the NRC may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(c) Upon discharge of an indebtedness, the NRC shall report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. The NRC may request Treasury or a Treasury-designated debt collection center to file a discharge report to the IRS on the NRC's behalf.

(d) When discharging a debt, the NRC shall request that litigation counsel release any liens of record securing the debt.

29. Section 15.61 is revised to read as follows:

§ 15.61 Prompt referral.

(a) The NRC shall promptly refer debts that are subject to aggressive collection activity (as described in subpart B of 10 CFR part 15) and that cannot be compromised, or debts on which collection activity cannot be suspended or terminated, to DOJ for litigation. Debts for which the principal amount exceeds \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, must be referred to the Civil Division or other division responsible for litigating such debts at DOJ, Washington, D.C. Debts for which the principal amount is \$1,000,000 or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, must be referred to the Department of Justice's Nationwide Central Intake Facility, as required by the CCLR instructions. Debts will be referred as early as possible, consistent with the NRC's aggressive collection activity and well within the one year of

the NRC's final determination of the fact and the amount of the debt.

(b) DOJ has exclusive jurisdiction over the debts referred to in paragraph (a) of this section. The NRC shall terminate the use of any administrative collection activities to collect a debt when the debt is referred to DOJ. The NRC shall advise the DOJ of the collection activities it used and the results. The NRC shall refrain from having any contact with the debtor and shall direct all inquiries to DOJ. The NRC shall immediately notify DOJ of any payments credited to the debtor's account after the account has been referred to DOJ. DOJ shall notify NRC in a timely manner of any payments it receives from the debtor.

30. Section 15.65 is revised to read as follows:

§ 15.65 Referral of a compromise offer.

The NRC may refer a debtor's firm written offer of compromise, which is substantial in amount, to the Civil Division or other appropriate litigating division in DOJ using a CCLR accompanied by supporting data and particulars concerning the debt.

31. Section 15.67 is revised to read as follows:

§ 15.67 Referral to the Department of Justice.

(a) Unless excepted by DOJ, the NRC shall complete the CCLR accompanied by a Certificate of Indebtedness, to refer all administratively uncollectible claims to the DOJ for litigation.

(b) The NRC shall indicate the actions it wishes DOJ to take regarding the referred claim on the CCLR.

(c) Before referring a debt to DOJ for litigation, the NRC shall notify each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification must comply with Executive Order 12988 (3 CFR, 1996 Comp., pp 157-163) and may be given as part of a demand letter or as a separate document.

(d) The NRC shall preserve all files and records that DOJ may need to prove the claim in court.

(e) The NRC may ordinarily not refer for litigation claims of less than \$2,500, exclusive of interest, penalties, and administrative charges, or such other amount as the Attorney General shall from time to time prescribe.

(f) The NRC may not refer claims of less than the minimum amount unless:

(1) Litigation to collect a smaller claim is important to ensure compliance with NRC's policies and programs;

(2) The claim is being referred solely to secure a judgment against the debtor, which will be filed as a lien against the

debtor's property under 28 U.S.C.3201 and returned to the NRC for enforcement, or

(3) The debtor has the clear ability to pay the claim, and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under state and Federal law and the judicial remedies available to the Government.

Dated at Rockville, Maryland, this 26th day of September 2001.

For the Nuclear Regulatory Commission.

Jesse L. Funches,
Chief Financial Officer.

[FR Doc. 01-25000 Filed 10-4-01; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-160-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 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 McDonnell Douglas Model MD-11 series airplanes. This proposal would require an inspection to detect chafed wires in the avionics equipment compartment, and repair, if necessary. The proposal also would require replacement of the existing cover of the avionics cooling fan with a new cover, and installation of a new placard on the cover. This action is necessary to ensure that the cover of the avionics cooling fans is removed only for fan maintenance, and to prevent smoke and/or fire in the avionics equipment compartment due to chafing and arcing as a result of maintenance personnel lying against the removed cover and/or insulation blankets that cover wire harnesses. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-160-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. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-160-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-160-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. 2001-NM-160-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident of a chafing condition between the wire harness and No. 2 wire harness connector, which resulted in arcing and consequent fire in the avionics equipment compartment during maintenance of a McDonnell Douglas Model MD-11 series airplane. This condition has been attributed to maintenance personnel removing the cover of the avionics cooling fans to access other equipment more easily and lying against the cover and/or insulation blankets that cover the wire harness of the No. 3 avionics cooling fan and the No. 2 wire harness connector. This action, plus the weight of the maintenance personnel lying against the cover or insulation blankets, resulted in the chafing of the wiring. These conditions, if not corrected, could result in smoke and/or fire in the avionics equipment compartment.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series airplanes, is continuing to review all aspects of the service history of those

airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11-21A033, Revision 01, dated April 30, 2001, which describes procedures for an inspection to detect chafed wires in the avionics equipment compartment, and repair, if necessary. It also describes procedures for replacement of the existing cover of the avionics cooling fan with a new, strengthened cover, and installation of a new placard on the cover stating that the cover should be removed only for fan maintenance. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 80 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 33 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$1,991 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$73,623, or \$2,231 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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time

required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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:

McDonnell Douglas: Docket 2001-NM-160-AD.

Applicability: Model MD-11 series airplanes, as listed in Boeing Alert Service Bulletin MD11-21A033, Revision 01, dated April 30, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the cover of the avionics cooling fans is removed only during fan maintenance, and to prevent smoke and/or fire in the avionics equipment compartment due to chafing and arcing as a result of maintenance personnel lying against a removed cover and/or insulation blankets that cover wire harnesses, accomplish the following:

Inspection and Repair, If Necessary

(a) Within 18 months after the effective date of this AD, do a general visual inspection to detect chafed wires in the area of the avionics cooling fans inside the avionics equipment compartment, per Boeing Alert Service Bulletin MD11-21A033, Revision 01, dated April 30, 2001. If any chafed wiring is detected, before further flight, repair per the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Replacement of A Cover and Installation of a New Placard

(b) Within 18 months after the effective date of this AD, replace the existing cover of the avionics cooling fan with a new cover, and install a new placard on the cover, per Boeing Alert Service Bulletin MD11-21A033, Revision 01, dated April 30, 2001.

Note 3: Accomplishment of the actions specified in McDonnell Douglas Service Bulletin MD11-21-033, dated May 1, 1992, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Spares

(c) As of the effective date of this AD, no person shall install a cover assembly, part number ABM7569-1, on any airplane.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(e) 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.

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25064 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-159-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 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 McDonnell Douglas Model MD-11 series airplanes. This proposal would require installation of a new support bracket with a clamp and screw to support the wire harness of the integrated drive generator (IDG). This action is necessary to prevent chafing and arcing of the wire harness of the IDG due to inadequate support, which could result in smoke and/or fire in the area of the forward engine mount. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-159-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. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the

Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-159-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-159-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. 2001-NM-159-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware that the wire harness of the integrated drive generator (IDG) has a tendency to sag or droop on McDonnell Douglas Model MD-11 series airplanes due to the lack of support on the tail engine. This can cause the wire harness to possibly contact the forward engine mount and fire detector responder, which may cause chafing and arcing. The harness also can migrate through the existing clamp, creating excess slack in the harness at that location. Inadequate support of the wire harness of the IDG, if not corrected, could result in arcing and consequent smoke and/or fire in the area of the forward engine mount.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11-24A095, Revision 01, dated March 16, 2001, which describes procedures for installation of a new support bracket with a clamp and screw to support the wire harness of the IDG.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 195 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 67 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would be provided by Rohr, Inc., at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$4,020, 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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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:

McDonnell Douglas: Docket 2001-NM-159-AD.

Applicability: Model MD-11 series airplanes, as listed in Boeing Alert Service Bulletin MD11-24A095, Revision 01, dated March 16, 2001; 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 prevent chafing and arcing of the wire harness of the integrated drive generator (IDG) due to inadequate support, which could result in smoke and/or fire in the area

of the forward engine mount, accomplish the following:

Installation of New Support Bracket

(a) Within 1 year after the effective date of this AD, install a new support bracket with a clamp and screw to support the wire harness of the IDG, per Boeing Alert Service Bulletin MD11-24A095, Revision 01, dated March 16, 2001.

Note 2: Accomplishment of the installation per McDonnell Douglas Service Bulletin MD11-24-095, dated January 29, 1996, before the effective date of this AD, is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(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.

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25063 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-158-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 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 McDonnell Douglas Model MD-11 series airplanes. This proposal would

require installing a clipnut and bracket and revising the routing of the wire assembly of the forward lower cargo door. This action is necessary to prevent failure of the wire assemblies and damage of a ballast of a light fixture, and consequent smoke and/or fire in the forward cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-158-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. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-158-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received. Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-158-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. 2001-NM-158-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident of damaged wires and a damaged ballast on a light fixture of the forward lower cargo door on a McDonnell Douglas Model MD-11 series airplane. Investigation revealed that the routing of the wire installation is causing the wire assemblies to ride heavy on the light's ballast located at station Y=999.000 above the forward lower cargo door. This condition, if not corrected, could result in failure of the wire assemblies and damage to the ballast of a light fixture, and consequent smoke and/or fire in the forward cargo compartment.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a

McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11-52A035, Revision 02, dated March 12, 2001, which describes procedures for installing a clipnut and bracket and revising the routing of the wire assembly of the forward lower cargo door. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 157 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 61 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$7,320, or \$120 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 proposed AD were not adopted. The

cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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:

McDonnell Douglas: Docket 2001–NM–158–AD.

Applicability: Model MD–11 series airplanes, as listed in Boeing Alert Service Bulletin MD11–52A035, Revision 02, dated March 12, 2001; 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 prevent failure of the wire assemblies and damage of a ballast of a light fixture, and consequent smoke and/or fire in the forward cargo compartment, accomplish the following:

Installation of Clipnut and Bracket and Revision of Routing of Wiring

(a) Within 1 year after the effective date of this AD, install a clipnut and bracket and revise the routing of the wire assembly of the forward lower cargo door, per Boeing Alert Service Bulletin MD11–52A035, Revision 02, dated March 12, 2001.

Note 2: Accomplishment of the actions specified in McDonnell Douglas Service Bulletin MD11–52–034, Revision 01, dated March 9, 1998, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(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.

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–25062 Filed 10–4–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 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 McDonnell Douglas Model MD–11 series airplanes. This proposal would require an inspection of the wiring in the fuel control panel of the wings for chafing damage and for proper routing of the wiring; and corrective action(s), if necessary. This action is necessary to prevent chafing of the wiring in a cutout area in the wing fuel control panel due to improperly routed wiring, which could result in electrical arcing in an abnormal fuel vapor zone and consequent possible ignition of the fuel vapor. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–157–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–157–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-157-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. 2001-NM-157-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents of loss of power to the wing fuel control panel on McDonnell Douglas Model MD-11 series airplanes. Investigation revealed that improperly routed wiring in a cutout area in the wing fuel control panel allows a test plug, located on the load select display unit (LSDU), to protrude into the wing fuel control panel. Such improper routing and the resultant chafing of the wiring of the wing fuel control panel, if not corrected, could result in electrical arcing in an abnormal fuel vapor zone and consequent possible ignition of the fuel vapor.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11-28A058, Revision 01, dated March 29, 2001, which describes procedures for an inspection of the wiring in the fuel control panel of the wings for chafing damage and for proper routing of the wiring; and corrective action(s), if necessary. The corrective actions include replacing damaged wires with new wires, and revising the wire routing out of the cutout area in the fuel control panel. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 78 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 30 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$1,800, 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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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:

McDonnell Douglas: Docket 2001–NM–157–AD.

Applicability: Model MD–11 series airplanes, as listed in Boeing Alert Service Bulletin MD11–28A058, Revision 01, dated March 29, 2001; 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 prevent chafing of the wiring in a cutout area in the wing fuel control panel due to improperly routed wiring, which could result in electrical arcing in an abnormal fuel vapor zone and consequent possible ignition of the fuel vapor, accomplish the following:

Inspection and Corrective Action, If Necessary

(a) Within 6 months after the effective date of this AD, do a general visual inspection of the wiring in the fuel control panel of the wings for chafing damage and for proper routing of the wiring, per Boeing Alert

Service Bulletin MD11–28A058, Revision 01, dated March 29, 2001.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) Condition 1. If no chafing damage is found and if the wiring is NOT routed into the cutout area of the fuel control panel, no further work is required by this AD.

(2) Condition 2. If no chafing damage is found and if the wiring is routed into the cutout area of the fuel control panel, before further flight, revise the wire routing out of the cutout area in the fuel control panel, per the service bulletin.

(3) Condition 3. If any chafing damage is found and if the wiring is routed into the cutout area of the fuel control panel, before further flight, replace any damaged wire with a new wire, and revise the wire routing out of the cutout area in the fuel control panel, per the service bulletin.

Note 3: Accomplishment of the actions specified in McDonnell Douglas service Bulletin MD11–28–058, dated January 3, 1995, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(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.

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 01–25061 Filed 10–4–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–65–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires replacing the ground support bracket(s); and rerouting the ground cables of the galley external power and main external power, or ground cables of the main external power; as applicable. This action would require a general visual inspection of the ground cables of the main external power and galley external power for excessive length, as applicable; and corrective actions, if necessary. This proposal is prompted by the FAA's determination that currently required actions may not adequately address the identified unsafe condition. The actions specified by the proposed AD are intended to prevent arcing and heat damage to the attachment points of the main external and galley power receptacle ground wire, insulation blankets outboard and aft of the receptacle area, and adjacent power cables, which could result in smoke and fire in the forward cargo compartment.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–65–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. Comments may be submitted via fax to (425) 227–1232.

Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-65-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-65-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. 2001-NM-65-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On November 22, 2000, the FAA issued AD 2000-24-13, amendment 39-12020 (65 FR 75616, December 4, 2000), applicable to certain McDonnell Douglas Model MD-11 airplanes, to require replacing the ground support bracket(s); and rerouting the ground cables of the galley external power and main external power, or ground cables of the main external power; as applicable. That action was prompted by the results of the analysis that revealed the existing design of the subject grounding system does not adequately prevent arcing and heat damage to the attachment points of the main external and galley power receptacle ground wire, insulation blankets outboard and aft of the receptacle area, and adjacent power cables. The requirements of that AD are intended to prevent arcing and heat damage to the attachment points of the main external and galley power receptacle ground wire, insulation blankets outboard and aft of the receptacle area, and adjacent power cables, which could result in smoke and fire in the forward cargo compartment.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000-24-13, the FAA in conjunction with Boeing has determined that actions required by that AD may not adequately preclude arcing and heat damage to the attachment points of the main external and galley power receptacle ground wire, insulation blankets outboard and aft of the receptacle area, and adjacent power cables.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11-24A138, Revision 01, dated June 5, 2001. The replacement

and rerouting procedures are identical to those in the original version of Alert Service Bulletin MD11-24A138, dated April 3, 2000, which was referenced in AD 2000-24-13 as the appropriate source of service information. Revision 01 of the service bulletin provides new instructions for performing a general visual inspection of the ground cables of the main external power and galley external power (as applicable) for excessive length; and corrective actions, if necessary. The corrective actions include cutting the cable assembly to correct length and installing a terminal on the cut end of the cable. Revision 01 of the service bulletin also changes fuselage number 0456 from Group 1 airplanes to Group 2, and adds Groups 3 and 4 airplanes (airplanes modified by the original version of the service bulletin). Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000-24-13 to continue to require replacing the ground support bracket(s); and rerouting the ground cables of the galley external power and main external power, or ground cables of the main external power; as applicable. The proposed AD also would require accomplishment of the new actions specified in Revision 01 of the service bulletin described previously.

Explanation of Change to Applicability from AD 2000-24-13

Because the effectivity of McDonnell Douglas Alert Service Bulletin MD11-4A138, Revision 01, dated June 5, 2001, includes a revised listing of airplane groups (no additional airplanes), the FAA has referenced that revision as the appropriate source of service information for determining the affected airplanes of this proposed AD. We also revised the applicability of paragraph (a)(1) of AD 2000-24-13 (requirements are restated in this proposed AD) to correctly exclude fuselage number 0456 and corrected paragraph (a)(2) of that AD to include that fuselage number. We have determined that the proposed corrections to paragraphs (a)(1) and (a)(2) of AD 2000-24-13 will neither increase the economic burden on any operator nor increase the scope of that AD.

Cost Impact

There are approximately 149 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 2000-24-13, and retained in this proposed AD, take approximately 1 (for Group 1 airplanes) or 2 (for Group 2 airplanes) work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts cost approximately \$337 (for Group 1 airplanes) or \$647 (for Group 2 airplanes) per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be \$397 (for Group 1 airplanes), or \$767 (for Group 2 airplanes) per airplane.

The new actions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be \$3,540, or \$60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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 removing amendment 39-12020 (65 FR 75616, December 4, 2000), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2001-NM-65-AD. Supersedes AD 2000-24-13, Amendment 39-12020.

Applicability: Model MD-11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11-24A138, Revision 01, dated June 5, 2001; 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 (c) 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 arcing and heat damage to the attachment points of the main external and galley power receptacle ground wire, insulation blankets outboard and aft of the receptacle area, and adjacent power cables, which could result in smoke and fire in the forward cargo compartment, accomplish the following:

Replacement and Reroute

(a) Within 12 months after January 8, 2001 (the effective date of AD 2000-24-13, amendment 39-12020), accomplish the actions specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A138, dated April 3, 2000, or Revision 01, dated June 5, 2001. As of the effective date of this AD, only Revision 01 of the service bulletin shall be used.

(1) For Group 1 airplanes listed in the original version of the service bulletin, excluding fuselage number 0456: Replace the ground support brackets with new brackets and reroute the ground cables of the galley external power and main external power.

(2) For Group 2 airplanes listed in the original version of the service bulletin and fuselage number 0456: Replace the ground support bracket and reroute the ground cables of the main external power.

Inspection and Corrective Actions, If Necessary

(b) Within 12 months after the effective date of this AD, accomplish the actions specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A138, Revision 01, dated June 5, 2001.

(1) For Group 3 airplanes listed in Revision 01 of the service bulletin: Do a general visual inspection of the ground cables of the main external power and galley external power for excessive length. If any cable length is excessive, before further flight, do applicable corrective actions (e.g., cut cable assembly to correct length and install a terminal on the cut end of the cable) per Condition 2 of Figure 3 of the service bulletin.

(2) For Group 4 airplanes listed in Revision 01 of the service bulletin: Do a general visual inspection of the ground cables of the main external power for excessive length. If any cable length is excessive, before further flight, do applicable corrective actions (e.g., cut cable assembly to correct length and install a terminal on the cut end of the cable) per Condition 2 of Figure 4 of the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(c) 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, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25060 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-64-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 and -11F 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 McDonnell Douglas Model MD-11 and -11F series airplanes. This proposal would require replacing the wire harness support bracket of the integrated drive generator (IDG) of the forward engine mounts with a new support bracket, and modifying the angle of the bracket near the oil filter. This action is necessary to prevent arcing of the IDG wire harness, which could result in smoke and/or fire in the area of the forward engine mount bolt retainer and/or fire detector responder. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-64-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted

via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-64-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-64-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. 2001-NM-64-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident of the wire harness of the integrated drive generator (IDG) chafing against the bolt retainer of the forward engine mount and/or the fire detector responder. This incident occurred on a McDonnell Douglas Model MD-11 series airplane, equipped with certain United Technologies Pratt & Whitney engines. Investigation revealed inadequate clearance between the IDG wire harness and the bolt retainer of the forward engine mount and/or fire detector responder. This condition, if not corrected, could cause arcing of the IDG wire harness, which could result in smoke and/or fire in the area of the forward engine mount bolt retainer and/or fire detector responder.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11-71A086, Revision 01, dated May 21, 2001, which describes procedures for replacing the wire harness support bracket of the IDG of the forward engine mounts with a new support bracket, and modifying the angle of the bracket near the oil filter. The modification includes cutting and grinding the flanges, deburring the edges, fusion welding the flanges, and reidentifying the bracket. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Boeing Alert Service Bulletin MD11-71A086 references United Technologies Pratt & Whitney Service Bulletin PW4MD11 71-107, dated May 15, 1996, as an additional source of service information for accomplishing the replacement and modification.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Boeing Alert Service Bulletin MD11-71A086 described previously.

Cost Impact

There are approximately 195 Model MD-11 and -11F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 67 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would be provided by the engine manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$12,060, or \$180 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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up,

planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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:

McDonnell Douglas: Docket 2001-NM-64-AD.

Applicability: Model MD-11 and -11F series airplanes, certificated in any category; equipped with United Technologies Pratt & Whitney Model PW4460 or PW4462 engines, engine buildup unit having neutral quick engine change, cum units 4 through 240 inclusive and serial numbers 5166001 through 5213003 inclusive.

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 (c) 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 arcing of the integrated drive generator (IDG) wire harness, which could result in smoke and/or fire in the area of the forward engine mount bolt retainer and/or fire detector responder, accomplish the following:

Replacement and Modification

(a) Within 1 year after the effective date of this AD, replace the wire harness support bracket of the IDG of the forward engine mounts with a new support bracket, and modify the angle of the bracket near the oil filter (i.e., cut and grind flanges, deburr edges, fusion weld flanges, and reidentify bracket), per Boeing Alert Service Bulletin MD11-71A086, Revision 01, dated May 21, 2001.

Note 2: Boeing Alert Service Bulletin MD11-71A086 references United Technologies Pratt & Whitney Service Bulletin PW4MD11 71-107, dated May 15, 1996, as an additional source of service information for accomplishing the proposed replacement and modification.

Spares

(b) As of the effective date of this AD, no United Technologies Pratt & Whitney Model PW4460 or PW4462 engines, engine buildup unit having neutral quick engine change, cum units 4 through 240 inclusive and serial numbers 5166001 through 5213003 inclusive, shall be installed on any airplane unless the requirements of paragraph (a) of this AD have been done.

Alternative Methods of Compliance

(c) 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, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

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

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25059 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-63-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 and MD-11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 and MD-11F series airplanes, that currently requires replacement of the existing terminal strips and supports above the main cabin area; and installation of spacers between terminal strips and mounting brackets in the avionics compartment; as applicable. This action would require replacing the applicable terminal strips in the avionics compartment with new terminal strips. This action also would require performing an inspection to detect arcing damage of the surrounding structure of the terminal strips and electrical cables in the avionics compartment, and repairing or replacing any damaged component with a new component. This proposal is prompted by reports of arcing between the power feeder cables and support brackets of the terminal strips on airplanes previously modified per the existing AD. The actions specified by the proposed AD are intended to prevent electrical arcing caused by power feeder cable terminal lugs grounding against terminal strip support brackets, which could result in smoke and fire in the main cabin or avionics compartment.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-63-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-63-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-63-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. 2001-NM-63-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On February 10, 2000, the FAA issued AD 2000-03-15, amendment 39-11574 (65 FR 8025, February 17, 2000), applicable to certain McDonnell Douglas Model MD-11 and -11F series airplanes, to require replacement of the existing terminal strips and supports above the main cabin area; and installation of spacers between terminal strips and mounting brackets in the avionics compartment; as applicable. That action was prompted by a report indicating that, during flight, an incident of electrical arcing occurred at a terminal strip located overhead in the main cabin. The requirements of that AD are intended to prevent electrical arcing caused by power feeder cable terminal lugs grounding against terminal strip support brackets, which could result in smoke and fire in the main cabin or avionics compartment.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000-03-15, the FAA has received a report of arcing

between the power feeder cables and support brackets of the terminal strips on a McDonnell Douglas Model MD-11 series airplane. This airplane had been modified per the requirements of paragraph (b) of AD 2000-03-15 (which referenced McDonnell Douglas Alert Service Bulletin MD11-24A147, dated March 24, 1999, as the appropriate source of service information for accomplishing the modification). Investigation revealed that the design and installation did not provide adequate clearance between the terminal strips and support brackets, which allowed a power feeder cable terminal lug to ground against a terminal strip support bracket. This condition, if not corrected, could result in electrical arcing and consequent smoke and/or fire in the main cabin or avionics compartment.

The incident that prompted this proposed AD is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11-24A178, dated May 14, 2001, which describes the following procedures:

1. Replacing the applicable terminal strips in the avionics compartment with new terminal strips (including inspecting wires for damage, repairing any damaged wire, and removing the nameplate); and
2. Performing a general visual inspection to detect arcing damage of the surrounding structure of the terminal strips and electrical cables in the avionics compartment, and repairing or replacing any damaged component with a new component.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000-03-15 to continue to require replacing the existing terminal strips and supports above the main cabin at station Y=5-32.000 with new terminal strips and supports. The proposed AD also would require accomplishment of the actions specified

in the service bulletin described previously, except as described below.

The modification required by paragraph (b) of AD 2000-03-15 would effectively be removed from the airplane when the replacement required by paragraph (b)(2) of this proposed AD is done.

Differences Between Proposed Rule and Service Bulletin

Operators should note that the service bulletin specifies to repair damaged structure per the Structural Repair Manual (SRM). However, the SRM does not provide adequate procedures for repair of certain structural material. Therefore, this proposed AD would require the repair of damaged structure that is not covered in the SRM to be accomplished per a method approved by the FAA.

Cost Impact

There are approximately 133 Model MD-11 and -11F series airplanes listed in McDonnell Douglas Alert Service Bulletin MD11-24A178, dated May 14, 2001, of the affected design in the worldwide fleet. The FAA estimates that 52 airplanes of U.S. registry would be affected by this proposed AD.

The new actions that are proposed in this AD action would take approximately 3 (for Group 1 airplanes) and 4 (for Group 2 airplanes) work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$1,142 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be \$1,322 (for Group 1 airplanes) and \$1,382 (for Group 2 airplanes) per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on

U.S. operators may be less than the cost impact figure indicated above.

Currently, there are no Model MD-11 series airplanes listed in McDonnell Douglas Alert Service Bulletin MD11-24A150, dated March 25, 1999, on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the replacement currently required by AD 2000-03-15, and retained in this proposed AD, at an average labor rate of \$60 per work hour. The cost of required parts would be \$885. Based on these figures, the cost impact of this AD for this replacement would be \$945 per airplane.

Regulatory Impact

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

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 removing amendment 39-11574 (65 FR 8025, February 17, 2000), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2001-NM-63-AD. Supersedes AD 2000-03-15. Amendment 39-11574.

Applicability: Model MD-11 and MD-11F series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11-24A150, dated March 25, 1999, and McDonnell Douglas Alert Service Bulletin MD11-24A178, dated May 14, 2001; 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 (c) 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 electrical arcing caused by power feeder cable terminal lugs grounding against terminal strip support brackets, which could result in smoke and fire in the main cabin or avionics compartment, accomplish the following:

Restatement of Certain Requirements of AD 2000-03-15: Replacement of Terminal Strips and Supports

(a) For airplanes listed in the effectivity of McDonnell Douglas Alert Service Bulletin MD11-24A150, dated March 25, 1999, on which the modification specified in McDonnell Douglas Alert Service Bulletin MD11-24-085, dated August 1, 1995, has not been accomplished: Within 1 year after March 23, 2000 (the effective date of AD 2000-03-15, amendment 39-11574), replace the existing terminal strips and supports above the main cabin at station Y=5-32.000 with new terminal strips and supports in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A150, dated March 25, 1999.

New Action Required by This AD: Replacement, Inspection, and Corrective Action, If Necessary

(b) For airplanes listed in the effectivity of McDonnell Douglas Alert Service Bulletin MD11-24A178, dated May 14, 2001: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD per the service bulletin.

(1) Replace the applicable terminal strips in the avionics compartment with new terminal strips (including inspecting wires for damage, repairing any damaged wire, and removing the nameplate); and

(2) Perform a general visual inspection to detect arcing damage of the surrounding structure of the terminal strips and electrical cables in the avionics compartment. If any damage is detected, before further flight, repair or replace any damaged component with a new component, per the service bulletin; except if the type of structural material of the surrounding structure that has been affected is not covered in the Structural Repair Manual, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(c) 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, Los Angeles ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25058 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-61-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 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 McDonnell Douglas Model MD-11 series airplanes. This proposal would require an inspection to detect discrepancies of the wire bundles in the avionics compartment in the vicinity of the pedestal extension area of the First Officer's seat; and corrective actions, if necessary. This action is necessary to prevent chafing of wiring in the avionics compartment, which could result in electrical arcing and consequent smoke and/or fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-61-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-61-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-61-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. 2001-NM-61-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents in which wires in the avionics compartment, routed under the First Officer's seat pedestal extension area, were found to be damaged on McDonnell Douglas Model MD-11 series airplanes. Wires from a wire

bundle chafed against the seat up stop, located on the pedestal lower extension, as the seat was moved up and down. Such chafing, if not corrected, could result in electrical arcing and consequent smoke and/or fire in the cockpit.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11-23A046, Revision 01, dated May 21, 2001. The service bulletin describes procedures for an inspection to detect discrepancies (i.e., chafing, improper routing or bundle support, missing tie wraps, improper clearance) of the wire bundles in the avionics compartment in the vicinity of the pedestal extension area of the First Officer's seat; and corrective actions, if necessary. The corrective actions include repairing discrepant parts, replacing damaged wires with new wires, rerouting the wire bundles, and tie wrapping bundles, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 118 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 48 airplanes of U.S. registry would be affected by this proposed AD, that it would take

approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$2,880, 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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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:

McDonnell Douglas: Docket 2001–NM–61–AD.

Applicability: Model MD–11 series airplanes, as listed in Boeing Alert Service Bulletin MD11–23A046, Revision 01, dated May 21, 2001; 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 prevent chafing of wiring in the avionics compartment, which could result in electrical arcing and consequent smoke and/or fire in the cockpit, accomplish the following:

(a) Within 1 year after the effective date of this AD, do a general visual inspection to detect discrepancies (i.e., chafing, improper routing or bundle support, missing tie wraps, improper clearance) of wire bundles in the avionics compartment in the vicinity of the pedestal extension area of the First Officer's seat, per the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–23A046, Revision 01, dated May 21, 2001. If any discrepancy is detected, before further flight, perform the applicable corrective actions (i.e., repair, replacement of damaged wires with new wires, reroute wire bundle, and tie wrap bundle) per the Accomplishment Instructions of the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Accomplishment of the inspections and corrective actions, if necessary, per McDonnell Douglas Service Bulletin MD11–23–046, dated March 17, 1995, before the

effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(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.

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

{FR Doc. 01–25057 Filed 10–4–01; 8:45 am}

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–60–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 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 McDonnell Douglas Model MD–11 series airplanes. This proposal would require relocation of the mod block tracks on the flight compartment floor beams in the avionics compartment beneath the Captain's and First Officer's seats. This action is necessary to prevent chafing and compression of electrical wiring at the upper track mod blocks on the flight compartment floor beams in the avionics compartment beneath the Captain's and First Officer's seats, which could result in electrical arcing and consequent smoke and/or fire in the

cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–60–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–60–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-60-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. 2001-NM-60-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of chafing and compression of electrical wiring at the upper track mod blocks on the flight compartment floor beams in the avionics compartment beneath the Captain's and First Officer's seats on McDonnell Douglas Model MD-11 series airplanes. The cause of such chafing and compression has been attributed to the seat posts, when in the full-down position, extending into the wiring. This condition, if not corrected, could result in electrical arcing and consequent smoke and/or fire in the cockpit.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series

airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11-24A036, Revision 01, dated May 21, 2001. The service bulletin describes procedures for relocation of the mod block tracks on the flight compartment floor beams in the avionics compartment beneath the Captain's and First Officer's seats. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 23 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 8 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$705 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$6,600, or \$825 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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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:

McDonnell Douglas: Docket 2001-NM-60-AD.

Applicability: Model MD-11 series airplanes, as listed in Boeing Alert Service Bulletin MD11-24A036, Revision 01, dated May 21, 2001; 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 prevent chafing and compression of electrical wiring at the upper track mod blocks on the flight compartment floor beams in the avionics compartment beneath the Captain's and First Officer's seats, which could result in electrical arcing and consequent smoke and/or fire in the cockpit, accomplish the following:

Relocation of Mod Block Tracks

(a) Within 1 year after the effective date of this AD, relocate the mod block tracks on the flight compartment floor beams in the avionics compartment beneath the Captain's and First Officer's seats, per Boeing Alert Service Bulletin MD-1124A036, Revision 01, dated May 21, 2001.

Note 2: Accomplishment of the relocation per McDonnell Douglas Service Bulletin MD11-24-036, dated May 8, 1992, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(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.

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 01-25056 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration 14 CFR Part 39

[Docket No. 98-ANE-66-AD]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to Pratt & Whitney (PW) PW4000 series turbofan engines, that currently requires revisions to the Time Limits Section of the manufacturer's Engine Manuals (EMs) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 4, 2001.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-66-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: 9-ane-adcomment@faa.gov. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location by appointment between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert McCabe, Aerospace Engineer,

Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7138, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report 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-ANE-66-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, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-66-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On June 5, 2000, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2000-12-02, Amendment 39-11780 (65 FR 37473, June 15, 2000), to require revisions to the Time Limits Section in the Engine Manuals (EMs) for certain Pratt & Whitney (PW) PW4000 series turbofan engines to include required enhanced inspection of selected critical life-limited rotating components in the fan rotor at each piece-part exposure.

New Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000-12-02 to require the additional critical life-limited rotating engine parts to be subject to focused inspection at each piece-part opportunity.

Economic Analysis

The FAA estimates that 500 engines installed on airplanes of US registry would be affected by this proposed AD, and that it would take approximately 10 work hours per engine to accomplish the proposed actions. The average labor rate is \$60 per work hour, the average Shop Visit Rate is .097, and the average usage is 3,250hrs/year/engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be about \$94,000 per year.

Regulatory Analysis

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

with state authorities prior to publication of this proposed rule.

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 removing Amendment 39-11780 (65 FR 37473, June 15, 2000); and by adding a new airworthiness directive, to read as follows:

Pratt & Whitney: Docket No. 98-ANE-66-AD. Supersedes AD 2000-12-02, Amendment 39-11780.

Applicability: Pratt & Whitney (PW) Model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, PW4168, PW4168A, PW4164, PW4074, PW4074D, PW4077,

PW4077D, PW4084, PW4084D, PW4090, PW4090-3, PW4090D, and PW4098 turbofan engines, installed on but not limited to Airbus A300, A310, and A330 series, Boeing 747, 767, and 777 series, and McDonnell Douglas MD-11 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) 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 already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, (1) revise the Time Limits section of the manufacturer's Engine Manual, Part Numbers 50A342, 50A345, 50A443, 50A605, 50A751, 51A342, 50A822, 51A751 and 51A345, as appropriate for the Pratt & Whitney PW4050, PW4052, PW4056, PW4060, PW4060A, PW4062, PW4060C, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, PW4164, PW4168, PW4168A, PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090-3, PW4090D, and PW4098 series turbofan engines, and (2) for air carrier's, revise the approved mandatory inspections section of the continuous airworthiness maintenance program, by adding the following: "MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the PW4000 series-Engine Cleaning, Inspection and Repair (CIR) Manuals:

For Engine Manuals 50A443, 50A605, and 50A822, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Hub, Front Compressor	All	72-31-07	Insp/Check-02	51A357
Hub, Turbine Front Assy (Stage 1)	All	72-52-05	Insp/Check-02	51A357
Hub, Turbine Intermediate Rear (Stage 2)	All	72-52-06	Insp/Check-02	51A357

For Engine Manual 50A342, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Hub, LPC Assembly	All	72-31-07	Insp/Check-02	51A357
Hub, Turbine Front Assembly (Stage 1)	All	72-52-05	Insp/Check-02	51A357
Seal—Air, HPT 2nd Stage	All	72-52-22	Insp/Check-02	51A357

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Hub, Turbine Rear (Stage 2)	All	72-52-06	Insp/Check-02	51A357

For Engine Manuals 50A345 and 50A751, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Hub, LPC Assembly	All	72-31-07	Insp/Check-02	51A750
Seal—Air, HPT 1st Stage	All	72-52-19	Insp/Check-02	51A750
Hub, Turbine Front Assembly (1st Stage)	All	72-52-05	Insp/Check-02	51A750
Seal—Air, HPT 2nd Stage Assembly	All	72-52-22	Insp/Check-02	51A750
Hub, Turbine rear Assembly (2nd Stage)	All	72-52-06	Insp/Check-02	51A750

For Engine Manuals 50A443, 50A605, and 50A882, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
HPC 5th Stage Disk	All	(¹) 72-35-06	Insp/Check-02	51A357
HPC Front Drum Rotor	All	(¹) 72-35-07	Insp/Check-02	51A357
HPC Rear Drum Rotor	All	(²) 72-35-08	Insp/Check-02	51A357
HPC Rear Drum Rotor	All	(³) 72-35-10	Insp/Check-02	51A357

(¹) For PW4000-94" Phase I & III ONLY.

(²) For PW4000-94" Phase I ONLY.

(³) For PW4000-94" Phase III ONLY.

For Engine Manuals 51A342, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
HPC 5th Stage Disk	All	72-35-06	Insp/Check-02	51A357
HPC Front Drum Rotor	All	72-35-07	Insp/Check-02	51A357
HPC Rear Drum Rotor	All	72-35-10	Insp/Check-02	51A357

For Engine Manuals 51A345 and 51A751, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
HPC 5th Stage Disk	All	72-35-06	Insp/Check-02	51A750
HPC Front Drum Rotor	All	72-35-07	Insp/Check-02	51A750
HPC Rear Drum Rotor	All	72-35-10	Insp/Check-02	51A750
HPC 15th Stage Disk	All	72-35-92	Insp/Check-02	51A750
HPT 1st Stage Airseal	All	72-52-19	Insp/Check-02	51A750
HPT Front Hub	All	72-52-05	Insp/Check-02	51A750
HPT 2nd Stage Airseal	All	72-52-22	Insp/Check-02	51A750
HPT Rear Hub	All	72-52-06	Insp/Check-02	51A750

For Engine Manuals 50A443, 50A605, and 50A882, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Stage 3 LPT Disk	All	72-53-13	Insp/Check-02	51A357
Stage 4 LPT Disk	All	72-53-14	Insp/Check-02	51A357
Stage 5 LPT Disk	All	72-53-15	Insp/Check-02	51A357
Stage 6 LPT Disk	All	72-53-16	Insp/Check-02	51A357

For Engine Manual 51A342, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Stage 3 LPT Disk	All	72-53-13	Insp/Check-02	51A357
Stage 4 LPT Disk	All	72-53-14	Insp/Check-02	51A357
Stage 5 LPT Disk	All	72-53-15	Insp/Check-02	51A357
Stage 6 LPT Disk	All	72-53-16	Insp/Check-02	51A357
Stage 7 LPT Disk	All	72-53-61	Insp/Check-02	51A357

For Engine Manual 51A345, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Stage 3 LPT Disk	All	72-53-13	Insp/Check-02, Config-1	51A750
Stage 4 LPT Disk	All	72-53-14	Insp/Check-02	51A750
Stage 5 LPT Disk	All	72-53-60	Insp/Check-02	51A750
Stage 6 LPT Disk	All	72-53-16	Insp/Check-02, Config-1	51A750
Stage 7 LPT Disk	All	72-53-72	Insp/Check-02	51A750
Stage 8 LPT Disk	All	72-53-62	Insp/Check-02, Config-1	51A750
Stage 9 LPT Disk	All	72-53-63	Insp/Check-02	51A750

For Engine Manual 51A751, add the following table data:

Part nomenclature	Part No.	CIR manual section	CIR manual inspection	CIR manual
Stage 3 LPT Disk	All	72-53-13	Insp/Check-02, Config-2. See Note (1).	51A750
Stage 4 LPT Disk	All	72-53-14	Insp/Check-02	51A750
Stage 5 LPT Disk	All	72-53-60	Insp/Check-02	51A750
Stage 6 LPT Disk	All	72-53-16	Insp/Check-02, Config-2. See Note (1).	51A750
Stage 7 LPT Disk	All	72-53-72	Insp/Check-02	51A750
Stage 8 LPT Disk	All	72-53-62	Insp/Check-02, Config-2. See Note (1).	51A750
Stage 9 LPT Disk	All	72-53-63	Insp/Check-02	51A750

(1) FPI method only.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

- (i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual; and
- (ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (d) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these enhanced inspections shall be performed only in accordance with the TLS of the appropriate PW4000 series Engine Manuals.

Alternative Method of Compliance

(c) 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 Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Engine Certification Office.

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

Special Flight Permits

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

Continuous Airworthiness Maintenance Program

(e) The record of the mandatory inspections required as a result of revising the Time Limits of the PW4000 series Engine Manuals as provided by paragraph (a) of this AD shall be maintained by FAA certificated air carriers who have an approved continuous airworthiness maintenance program in accordance with the record keeping system currently specified in their manual required by sections 121.369 of the Federal Aviation Regulations (14 CFR 121.369); or, in lieu of the record showing the current status of each mandatory inspection required by sections 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)), certificated air carriers may establish an alternate system of record retention that provides a method for preservation and retrieval of the maintenance record that includes the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the manual required by sections 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)) provided the alternate system must require the maintenance record be maintained either indefinitely or until the work is repeated.

Note 3: These record keeping requirements apply only to the records used to document the mandatory enhanced inspections required as a result of revising the Time Limits section of the PW4000 series Engine Manuals as provided in paragraph (a) of this AD, and do not alter 1 or amend the record keeping requirements for any other AD or regulatory requirement.

Issued in Burlington, Massachusetts, on October 1, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01-25055 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NE-49-AD]

RIN 2120-AA64

Airworthiness Directives; General Electric Company CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), that is applicable to General Electric Company CF34 series turbofan engines. That AD currently requires revisions to the Engine Maintenance Program specified in the manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) CF34 series turbofan engines. This proposal would modify the airworthiness limitations section of the manufacturer's

manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 4, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-49-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location by appointment between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7146, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action 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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NE-49-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-49-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On May 7, 2001, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2000-03-03 R1, Amendment 39-12228 (66 FR 26787, May 15, 2001), to require revisions to the Engine Maintenance Program specified in the manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) CF34 series turbofan engines at each piece part exposure exposure.

Additional Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000-03-03 R1 to add additional inspections for certain critical rotating engine parts at each piece-part opportunity.

Economic Analysis

The FAA estimates that 1022 engines installed on aircraft of U.S. registry

would be affected by this proposed AD. The FAA also estimates that it would take approximately 32 work hours per engine to accomplish the proposed inspections, and that the average labor rate is \$60 per work hour. Using average shop visit rates, 200 engines are expected to be affected per year. Based on these figures, the total annual cost impact of the proposed AD on U.S. operators is estimated to be \$384,000.

Regulatory Analysis

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

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 removing Amendment 39-12228 (66 FR 26787, May 15, 2001), and by adding a new airworthiness directive:

General Electric Company: Docket No. 99-NE-49-AD. Supersedes AD 2000-03-03 R1, Amendment 39-12228.

Applicability

This airworthiness directive (AD) is applicable to General Electric Company (GE) CF34-3A1 and -3B1 series turbofan engines, installed on but not limited to Bombardier Canadair CL 600-2B19(R) aircraft.

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

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the CF34 Engine Maintenance Program, Chapter 5-21-00, of the GE CF34 Series Turbofan Engine Manual, SEI-756. For air carrier operations, revise the approved continuous airworthiness maintenance program, by adding the following:

9. CF34-3A1 and CF34-3B1 Engine Maintenance Program—Mandatory Inspection Requirements.

(A) This procedure is used to identify specific piece-parts that require mandatory inspections that must be accomplished at each piece-part exposure using the applicable Chapters referenced in Table 804 for the inspection requirements. The inspection requirements listed in Table 804 are not required for any piece-part exposure resulting when the engine remains on-wing while performing maintenance practice, special procedure Number 41 listed in SEI-756, chapter 72-00-00.

(B) Piece-part exposure is defined as follows: Note: Fan disk piece-part includes

the fan disk with the 56 fan pin bushings installed.

(1) For engines that utilize the "On Condition" maintenance requirements: The part is considered completely disassembled to the piece-part level when done in accordance with the disassembly instructions in the GEAE authorized overhaul Engine Manual, and the part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(2) For engines that utilize the "Hard Time" maintenance requirements: The part is considered completely disassembled when done in accordance with the disassembly instructions used in the "Minor Maintenance" or "Overhaul" instructions in the GEAE engine authorized Engine Manual, and the part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

C. Refer to Table 804 below for the mandatory inspection requirements.

TABLE 804.—MANDATORY INSPECTION REQUIREMENTS

Part nomenclature	Manual/chapter section/subject	Mandatory inspection
Fan Disk (all)	72-21-00, INSPECTION	All areas (FPI). Bores (ECI).
Stage 1 high pressure turbine (HPT) Rotor Disk (all).	72-46-00, INSPECTION	All areas (FPI). Bores (ECI). Boltholes (ECI). Air Holes (ECI).
Stage 2 HPT Rotor Disk (all)	72-46-00, INSPECTION	All Areas (FPI). Bores (ECI). Boltholes (FPI). Air Holes (FPI).
(a) Boltless Rim Configuration		Boltholes (ECI). Air Holes (ECI).
(b) Bolted Rim Configuration		All areas (FPI). Bore (ECI).
HPT Rotor Outer Torque Coupling (all)	72-46-00, INSPECTION	All Areas (FPI). All Areas (FPI).
Forward Fan Shaft (all)	72-21-00, INSPECTION	All Areas (FPI).
Fan Drive Shaft (all)	72-22-00, INSPECTION	All Areas (FPI).
Stage 1 Compressor Rotor Disk (CF34-3A1) or Stage 1 Compressor Rotor Blisk (CF34-3B1) (all).	72-33-00, INSPECTION	All Areas (FPI).
Compressor Forward Shaft (all)	72-33-00, INSPECTION	All Areas (FPI).
Stage 2 Compressor Rotor Disk (all)	72-33-00, INSPECTION	All Areas (FPI).
Stage 3-8 Compressor Rotor Spool (all)	72-33-00, INSPECTION	All Areas (FPI).
Stage 9 Compressor Rotor Disk (all)	72-33-00, INSPECTION	All Areas (FPI).
Compressor Rotor Rear Shaft (all)	72-33-00, INSPECTION	All non-coated Areas (FPI).
Compressor Discharge Rotating Seal (all)	72-33-00, INSPECTION	All non-coated Areas (FPI).
Stage 10-14 Compressor Rotor Spool (all)	72-33-00, INSPECTION	All Areas (FPI).
Turbine Rear Shaft (LPT Rotor) (all)	72-53-00, INSPECTION	All Areas (FPI).
Stage 3 Turbine Disk (all)	72-53-00, INSPECTION	All Areas (FPI).
Stage 4 Turbine Disk (all)	72-53-00, INSPECTION	All Areas (FPI).
Stage 5 Turbine Disk (all)	72-53-00, INSPECTION	All Areas (FPI).
Stage 6 Turbine Disk (all)	72-53-00, INSPECTION	All Areas (FPI).
Turbine Driver Cone (all)	72-53-00, INSPECTION	All Areas (FPI).

FPI = Fluorescent Penetrant Inspection Method
ECI = Eddy Current Inspection

(b) Except as provided in paragraph (c) of this AD, and notwithstanding the provisions of section 43.16 of the Federal Aviation

Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the CF34 Engine

Maintenance Program, Chapter 5-21-00, of the General Electric Company, CF34 Series Turbofan Engine Manual, SEI-756.

Alternative Method of Compliance

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

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

Special Flight Permits

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

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] must maintain records of the mandatory inspections that result from revising the CF34 Engine Maintenance Program and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the Engine Maintenance Program requirements specified in the GE CF34 Series Turbofan Engine Manual.

Issued in Burlington, Massachusetts, on October 1, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate,
Aircraft Certification Service.

[FR Doc. 01-25054 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2001-CE-34-AD]

RIN 2120-AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes that are equipped with certain main landing gear (MLG) radius rods. This proposed AD would require you to inspect the MLG radius rod cylinders for the required conductivity or hardness standard. This proposed AD would also require you to replace any MLG radius rod cylinder that does not meet this standard. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to prevent failure of the MLG due to incorrectly heat treated MLG radius rod cylinders. Such failure during takeoff, landing, or taxi operations, could lead to loss of airplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 6, 2001.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-CE-34-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901

Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:**Comments Invited**

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

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

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001-CE-34-AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes equipped with certain main landing gear (MLG) radius rods.

The CAA reports, that the manufacturer of the MLG radius rods, APPh Ltd., incorrectly heat treated a batch of radius rod cylinders, part number (P/N) 184811. Incorrect heat treatment of the MLG radius rod cylinder causes the part to be below required design strength. This results in reduced structural integrity of the part.

What are the consequences if the condition is not corrected? This condition, if not corrected, could result in failure of the MLG. Such failure during takeoff, landing, or taxi operations could lead to loss of airplane control.

Is there service information that applies to this subject? The following service bulletins apply to this subject:

- British Aerospace Alert Service Bulletin 32-A-JA-010740, Revision 2, Issued: July 23, 2001. This service bulletin specifies inspecting APPH Ltd. P/Ns 1847-A through 1847-L and 1862-A through 1862-L MLG radius rods;
- APPH Ltd. Service Bulletin No. 1847-32-08, dated July 2001. This service bulletin includes procedures for inspecting P/Ns 1847-A through 1847-L and 1848-A through 1848-F MLG radius rods for required conductivity or hardness standard; and
- APPH Ltd. Service Bulletin No. 1862-32-08, dated July 2001. This service bulletin includes procedures for inspecting P/Ns 1862-A through 1862-L and 1848-A through 1848-F MLG radius rods for conductivity or hardness standard.

What action did the CAA take? The CAA classified these service bulletins as mandatory and issued British AD Number 005-07-2001, not dated, in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

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

What has FAA decided? The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

- The unsafe condition referenced in this document exists or could develop

on other British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes of the same type design that are equipped with the referenced MLG radius rods;

- The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
- AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to inspect the MLG radius rods for the required conductivity or hardness standard and replace any rod that does not meet this standard.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 250 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed inspection using the eddy current conductivity test:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour per radius rod (2 per airplane) × \$60 = \$120	No parts required.	\$120	\$30,000.

We estimate the following costs to accomplish the proposed inspection using the Rockwell hardness test:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 workhours per radius rod (2 per airplane) × \$60 = \$600	No parts required.	\$600	\$150,000.

We estimate the following costs to accomplish any necessary replacements that would be required based on the

results of the proposed inspection. We have no way of determining the number

of airplanes that may need such replacement:

Labor cost for replacement of each main landing gear radius rod	Parts cost	Total cost per airplane
5 workhours × \$60 = \$300	\$9,000	\$9,300.

Are there differences between this proposed AD and the service information? British Aerospace Alert Service Bulletin 32-A-JA010740, Revision 2, Issued: July 23, 2001, specifies reporting the results of the

inspections to British Aerospace Regional Aircraft. This proposed AD does not require this action. The FAA recommends that each owner/operator submit this information. We are including a note in this proposed AD to

reflect this. British Aerospace and the British CAA will use this information to determine whether further action is necessary.

The FAA will evaluate the information from the British CAA and may initiate further rulemaking action.

Compliance Time of This Proposed AD

What is the compliance time of this proposed AD? The compliance time of this proposed AD is "within the next 30 calendar days after the effective date of this AD".

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? Failure of the MLG is an unsafe condition; however, it is not a direct result of airplane operation. The chance of this situation occurring is the same for an airplane with 10 hours TIS as it is for an airplane with 500 hours TIS. A calendar time for compliance will ensure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule

would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace: Docket No. 2001-CE-34-AD

(a) *What airplanes are affected by this AD?* This AD affects Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are:

- (1) certificated in any category; and
- (2) equipped with a main landing gear (MLG) radius rod, APPH Ltd. part number 1847-A through 1847-L, 1848-A through 1848-F, or 1862-A through 1862-L.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the MLG due to incorrectly heat treated MLG radius rod cylinders. Such failure during takeoff, landing, or taxi operations could lead to loss of airplane control.

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

Actions	Compliance	Procedures
(1) Inspect, using an eddy current conductivity tester, or the Rockwell hardness test, the left and right main landing gear (MLG) radius rods, part numbers (P/N) 1847-A through 1847-L, 1848-A through 1848-F, and 1862-A through 1862-L, for correct conductivity or hardness standard specified in the referenced service information.	Within the next 30 calendar days after the effective date of this AD.	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32-A-JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847-32-08, dated July 2001, APPH Ltd. Service Bulletin 1862-38-08, dated July 2001, and the applicable maintenance manual.
(2) If the results of the inspection are greater than 46% International Aluminum & Copper Standards (IACS) using the eddy current conductivity test, or less than 79 using the Rockwell hardness test, replace the MLG radius rod with an FAA-approved MLG radius rod meets the conductivity or hardness standard specified in the referenced service information.	Within the next 90 calendar days after the inspection required in paragraph d(1) of this AD.	In accordance with British Aerospace Alert Service Bulletin 32-A-JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847-32-08, dated July 2001, and APPH Ltd. Service Bulletin 1862-32-08, dated July 2001.
(3) If the results of the inspection are equal to or greater than 41.5% but less than or equal to 46% IACS using the eddy current conductivity test, or equal to or greater than 79 but less than or equal to 87 using the Rockwell hardness test, replace the MLG radius rod with an FAA-approved MLG radius rod that meets the conductivity or hardness requirements specified in the referenced service information.	Within the next 180 calendar days after the inspection required in paragraph d(1) of this AD.	In accordance with British Aerospace Alert Service Bulletin 32-A-JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847-32-08, dated July 2001, and APPH Ltd. Service Bulletin 1862-32-08, dated July 2001.
(4) If the results of the inspection are in the range of 36.5 and 41.5% using the eddy current conductivity test, or in the range of 87 and 90 using the Rockwell hardness test, no replacement of the MLG radius rod is required.	Not applicable	In accordance with APPH Ltd. Service Bulletin 1847-32-08, dated July 2001, and APPH Ltd. Service Bulletin 1862-32-08, dated July 2001.

Actions	Compliance	Procedures
(5) Do not install, on any affected airplane, a P/N 1847-A through 1847-L, 1848-A through 1848-F, or 1862-A through 1862-L MLG radius rod, unless it has been inspected and is found to meet the conductivity or hardness standard specified in the service information.	As of the effective date of this AD	In accordance with British Aerospace Alert Service Bulletin 32-A-JA010740, Revision 2, Issued: July 23, 2001.

Note 1: The compliance time of this AD differs from that specified in British Aerospace Alert Service Bulletin 32-A-JA-010740, Revision 2, Issued July 23, 2001. This AD takes precedence over any other information.

Note 2: British Aerospace Alert Service Bulletin 32-JA010740, Revision 2, Issued: July 23, 2001, specifies reporting the results of the inspections to British

Aerospace Regional Aircraft. The FAA highly recommends that each owner/operator submit this information. British Aerospace and the British Civil Airworthiness Authority (CAA) will use this information to determine whether further action is necessary. The FAA will evaluate the information from the British CAA and may initiate further rulemaking action.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

- (1) Your alternative method of compliance provides an equivalent level of safety; and
- (2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from

British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in British AD Number 005-07-2001, not dated.

Issued in Kansas City, Missouri, on October 1, 2001.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25048 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-52-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 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 McDonnell Douglas Model MD-11 series airplanes. This proposal would require an inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment; and repair or replacement of any damaged part with a new part. This proposal also would require modification of the applicable terminal strip installation in the cargo compartment, and replacement of the applicable terminal strips in the cargo compartment with new strips. This action is necessary to prevent arcing and consequent damage to the terminal strips and adjacent structure and smoke/fire in the forward cargo compartment.

This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-52-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. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-52-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-52-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. 2001-NM-52-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident in which arcing occurred between the power feeder cables and terminal strip support brackets on a McDonnell Douglas Model MD-11 series airplane. Investigation revealed that insufficient clearance exists between the terminal strips and the associated support brackets. This condition, if not corrected, could result in arcing and consequent damage to the terminal strips and adjacent structure and smoke/fire in the forward cargo compartment.

This incident is not considered to be related to an accident that occurred off

the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11-24A174, dated January 31, 2001. The service bulletin describes procedures for a general visual inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment; and repair or replacement of any damaged part with a new part. The service bulletin also describes procedures for modification of the applicable terminal strip installation in the cargo compartment, and replacement of the applicable terminal strips in the cargo compartment with new strips. The modification and replacement include inspecting for damaged cables and repairing of any damaged cable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that the service bulletin specifies to repair damaged structure per the Structural Repair Manual (SRM). However, the SRM does not provide adequate procedures for repair of certain structural material. Therefore, this proposed AD would require the repair of damaged structure that is not covered in the SRM to be

accomplished per a method approved by the FAA.

Cost Impact

There are approximately 154 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$21,240, or \$360 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. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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:

McDonnell Douglas: Docket 2001-NM-52-AD.

Applicability: Model MD-11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11-24A174, dated January 31, 2001; 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 prevent arcing and consequent damage to the terminal strips and adjacent structure and smoke/fire in the forward cargo compartment, accomplish the following:

Inspection, Modification, Replacement, and Corrective Actions, If Necessary

(a) Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD per the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11-24A174, dated January 31, 2001.

(1) Do a general visual inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment. If any

damage is detected, before further flight, repair or replace the damaged part with a new part, per the service bulletin; except if the type of structural material that has been affected is not covered in the Structural Repair Manual (SRM), repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Where there are differences between the referenced service bulletin and the AD, the AD prevails.

(2) Modify the applicable terminal strip installation in the cargo compartment (including inspection for damaged cables and repair of any damaged cable).

(3) Replace the applicable terminal strips in the cargo compartment with new strips (including inspection for damaged cables and repair of any damaged cable).

Alternative Methods of Compliance

(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, Los Angeles ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(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.

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 01-25065 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-53-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 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 McDonnell Douglas Model MD-11 series airplanes. This proposal would require performing an inspection of the wiring of the Firex bottle discharge cartridge of the No. 2 engine at station Y=2163.00 bulkhead for chafing on adjacent structure and damaged wiring; repairing damaged wires; and repositioning wires, if necessary. This action is necessary to prevent chafing and possible damage to the wiring of the Firex bottle discharge cartridge of the No. 2 engine, which could result in improper distribution of the fire extinguishing agent within the No. 2 engine in the event of a fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-53-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. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-53-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service

Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-53-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. 2001-NM-53-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware that, during an inspection of a McDonnell Douglas Model MD-11 series airplane, the wiring of the Firex bottle discharge cartridge of the No. 2 engine was found chafing an adjacent support beam. A subsequent inspection found three other occurrences of the discrepancy. The cause of such chafing has been attributed to inadequate clearance between the wiring of the Firex bottle discharge cartridge and adjacent support beam. This condition, if not corrected, could result in chafing and possible damage to the wiring of the Firex discharge cartridge of the No. 2 engine, which could result in improper distribution of the fire extinguishing agent within the No. 2 engine in the event of a fire.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin MD11-26-037, dated November 8, 2000. The service bulletin describes procedures for performing an inspection of the wiring of the Firex bottle discharge cartridge of the No. 2 engine at station Y=2163.00 bulkhead for chafing on adjacent structure; repairing damaged wires; and repositioning wires, if necessary. Accomplishment of the actions specified in the service bulletin is

intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Difference Between the Service Bulletin and the Proposed AD

The Accomplishment Instructions of the referenced service bulletin describes procedures for an inspection of the wiring of the Firex bottle discharge cartridge of the No. 2 engine at station Y=2163.00 bulkhead for chafing on adjacent structure. However, the on-condition procedures for that inspection in the Accomplishment Instructions address chafing AND damaged wiring. Therefore, this proposed AD requires the subject inspection for detecting both chafing and damaged wiring.

Cost Impact

There are approximately 148 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 58 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$3,480, 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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal

would not have federalism implications under Executive Order 13132.

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:

McDonnell Douglas: Docket 2001-NM-53-AD.

Applicability: Model MD-11 series airplanes, as listed in Boeing Service Bulletin MD11-26-037, dated November 8, 2000; 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 prevent chafing and possible damage to the wiring of the Firex bottle discharge

cartridge of the No. 2 engine, which could result in improper distribution of the fire extinguishing agent within the No. 2 engine in the event of a fire, accomplish the following:

General Visual Inspection

(a) Within 15 months after the effective date of this AD, do a general visual inspection of the wiring of the Firex bottle discharge cartridge of the No. 2 engine at station Y=2163.00 bulkhead for chafing on adjacent structure and damaged wiring, per Boeing Service Bulletin MD11-26-037, dated November 8, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Where there are differences between the referenced service bulletin and the AD, the AD prevails.

Condition 1 (No Chafing or Damaged Wiring)

(1) If no chafing or damaged wiring is detected, no further action is required by this AD.

Condition 2 (Chafing With No Damaged Wiring)

(2) If any chafing with no damaged wiring is detected, before further flight, reposition wires, per the service bulletin.

Condition 3 (Chafing With Damaged Wiring)

(3) If any chafing with damaged wiring is detected, before further flight, repair damaged wires and reposition wires, per the service bulletin.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(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.

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25066 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-54-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 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 McDonnell Douglas Model MD-11 series airplanes. This proposal would require an inspection of the connector cables for signs of arcing and/or signs of moisture penetration into the overhead decoder units (ODU), and replacement of the affected ODU(s) with a new ODU, if necessary. This proposal also would require modification and reidentification of the cable assemblies and the connect cable assemblies at ship-side power to the ODU, ODU to ODU, and adjacent bag racks. This action is necessary to prevent moisture from entering through the rear of the connector of the ODUs located in the overhead baggage stowage racks, which could result in a short, damage to the connector pins, and consequent smoke and/or fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-54-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent

via fax or the Internet must contain "Docket No. 2001-NM-54-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-54-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. 2001-NM-54-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of several incidents of smoke in the cabin on McDonnell Douglas Model MD-11 series airplanes. Investigation revealed that moisture entered through the rear of the connector of an overhead decoder unit (ODU) located in the overhead baggage stowage racks and caused a short and damaged the connector pins. This condition, if not corrected, could result in smoke and/or fire in the cabin.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11-33A065, dated February 26, 2001, which describes procedures for an inspection of the connector cables for signs of arcing and/or signs of moisture penetration into the ODUs, and replacement of the affected ODU(s) with a new ODU, if necessary. The service

bulletin also describes procedures for modification and reidentification of the cable assemblies and the connect cable assemblies at ship-side power to the ODU, ODU to ODU, and adjacent bag racks. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 118 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 30 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per ODU (the number of ODUs will vary between 15 and 299 depending on the airplane configuration) to accomplish the proposed inspection and modifications, and that the average labor rate is \$60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$60 per ODU.

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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct

effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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:

McDonnell Douglas: Docket 2001–NM–54–AD.

Applicability: Model MD–11 series airplanes, as listed in Boeing Alert Service Bulletin MD11–33A065, dated February 26, 2001; 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 prevent moisture from entering through the rear of the connector of the overhead decoder units (ODU) located in the overhead baggage stowage racks, which could result in a short, damage to the connector pins, and consequent smoke and/or fire in the cabin, accomplish the following:

Inspection, Replacement, if Necessary, and Modification

(a) Within 12 months after the effective date of this AD, do the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, per Boeing Alert Service Bulletin MD11–33A065, dated February 26, 2001.

(1) Do a general visual inspection of the connector cables for signs of arcing and/or signs of moisture penetration into the ODUs. If any sign of arcing or moisture is detected, before further flight, replace the affected ODU(s) with a new ODU, per the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Modify and reidentify the cable assemblies.

(3) Modify and reidentify the connect cable assemblies at ship-side power to the ODU, ODU to ODU, and adjacent bag racks.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(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.

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 01–25067 Filed 10–4–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–55–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center to detect damage; and corrective actions, if necessary. This action would require replacement of the electrical wiring of the galley in the electrical power center in bays 1, 2, and 3 with larger gage cable assemblies, which would terminate the repetitive inspections. The proposed AD also expands the applicability of the existing AD to include two additional airplanes. This action is necessary to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3 and 4 GLCU, which could result in smoke and fire in the center accessory compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–55–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–55–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket Number 2001-NM-55-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. 2001-NM-55-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On December 7, 1999, the FAA issued AD 99-26-03, amendment 39-11463 (64 FR 71001, December 20, 1999), applicable to certain McDonnell Douglas Model MD-11 airplanes, to require repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center to detect damage; and corrective actions, if necessary. (A final rule, correction was published in the *Federal Register* on February 2, 2000 (65 FR 4870)). That action was prompted by an incident of no power to the aft galleys and two incidents of sparking sounds coming from the aft galleys due to damage of the No. 3 and 4 wire assembly terminal lugs and overheating of the power feeder cables on the G3 GLCU. The requirements of that AD are intended to prevent such damage due to the accumulated effects over time from overheating of the power feeder cables on the G3 GLCU, which could result in smoke and fire in the G3 galley.

The incident that prompted AD 99-26-03 is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

FAA's Determination

In the preamble to AD 99-26-03, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA

now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin MD11-24-184, dated February 22, 2001. The service bulletin describes procedures for replacement of the electrical wiring of the galley in the electrical power center (EPC) in bays 1, 2, and 3 with larger gage cable assemblies, which would eliminate the need for the repetitive inspections requirements of AD 99-26-03. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99-26-03 to continue to require repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the GLCU with the No. 3 bay electrical power center to detect damage; and corrective actions, if necessary. The proposed AD also would require accomplishment of the action specified in the service bulletin described previously, which would constitute terminating action for the repetitive inspection requirements. The proposed AD also expands the applicability of the existing AD to include two additional airplanes.

Explanation of Change in Applicability

The applicability of the proposed AD references Boeing Service Bulletin MD11-24-184, dated February 22, 2001, as the appropriate source of service information for determining the affected airplanes. The service bulletin reflects the most current listing of airplanes subject to the requirements of this proposed AD, including airplane fuselage numbers 547 and 554, which were inadvertently omitted from the effectivity of McDonnell Douglas Alert Service Bulletin MD11-24A160, Revision 01, dated November 11, 1999 (referenced in the applicability statement of AD 99-26-03).

Cost Impact

There are approximately 135 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 31 airplanes of U.S.

registry would be affected by this proposed AD.

The inspection that is currently required by AD 99-26-03, and retained in this proposed AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be \$1,860, or \$60 per airplane, per inspection cycle.

The new action that is proposed in this AD action would take approximately 18 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$14,647 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be \$487,537, or \$15,727 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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 removing amendment 39-11463 (64 FR 71001, December 20, 1999), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2001-NM-55-AD. Supersedes AD 99-26-03, Amendment 39-11463.

Applicability: Model MD-11 series airplanes, as listed in Boeing Service Bulletin MD11-24-184, dated February 22, 2001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the wire assembly terminal lugs and power feeder cables due to the accumulated effects over time from overheating of the power feeder cables on the No. 3 and 4 galley load control unit (GLCU), which could result in smoke and fire in the central accessory compartment; accomplish the following:

Restatement of Requirements of AD 99-26-03

Repetitive Inspections and Replacement, If Necessary

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11-24A160, Revision 01, dated November 11, 1999; Within 60 days after January 4, 2000 (the effective date of AD 99-26-03, amendment 39-11463), perform a general visual inspection of the power feeder cables, terminal strip, fuseholder, and fuses of the

GLCU within the No. 3 bay electrical power center to detect damage (i.e., discoloration of affected parts or loose attachments), in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A160, dated August 30, 1999; or Revision 01, dated November 11, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no damage is detected during any inspection required by this AD, repeat the general visual inspection thereafter at intervals not to exceed 600 flight hours.

(2) If any damage is detected during any inspection required by this AD, prior to further flight, replace the power feeder cables, fuseholder, and/or fuses, as applicable, in accordance with the service bulletin. Repeat the general visual inspection thereafter at intervals not to exceed 600 flight hours.

New Actions Required by This AD

Repetitive Inspections and Replacement, If Necessary

(b) For airplanes having serial numbers 547 and 554: Within 60 days after the effective date of this AD, do the actions required by paragraphs (a), (a)(1), and (a)(2) of this AD, as applicable.

Replacement

(c) Within 12 months after the effective date of this AD, replace the electrical wiring of the galley in the electrical power center in bays 1, 2, and 3 with larger gage cable assemblies, in accordance with Boeing Service Bulletin MD11-24-184, dated February 22, 2001. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) 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. Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25068 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-49-AD]

RIN 2120-AA64

Airworthiness Directives; General Electric Company CF6-80A, CF6-80C2, and CF6-80E1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to General Electric Company (GE) CF6-80A, CF6-80C2, and CF6-80E1 series turbofan engines, that currently requires revisions to the Life Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional mandatory inspections for certain high pressure compressor (HPC), low pressure turbine (LPT), and high pressure turbine (HPT) parts. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 4, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-49-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments

may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7192, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted 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 action 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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-ANE-49-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-49-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On April 14, 2000, the FAA issued AD 2000-08-12, Amendment 39-11698 (65 FR 21638, April 24, 2000), to require revisions to the Life Limits Section of

the manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) CF6-80A, CF6-80C2, and CF6-80E1 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

Additional Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained engine failures. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

This proposal will also differentiate between standard HPTR and R88DT HPTR inspections and add a dovetail slot bottom eddy current inspection for the -80C2 HPT Stage 1 disk.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000-08-12 to add additional inspections for certain HPC, LPT and HPT components. These inspections would be required at each piece-part opportunity.

Economic Analysis

The FAA estimates that 790 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 10 work hours per engine to accomplish the proposed additional inspections and that the average labor rate is \$60 per work hour. The total cost of the new inspections per engine would be approximately \$600. The FAA estimates that there will be approximately 327 shop visits per year that result in piece-part-exposure of the added affected components, therefore, the total annual cost for the additional inspections is estimated to be \$196,200.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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 effect, 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 removing Amendment 39-11698 (65 FR 21638, April 24, 2000), and by adding a new airworthiness directive, to read as follows:

General Electric Company: Docket No. 98-ANE-49-AD. Supersedes AD 2000-08-12, Amendment 39-11698.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6-80A, CF6-80C2, and CF6-80E1 series turbofan engines, installed on but not limited to Airbus Industrie A300, A310, and A330 series, Boeing 747 and 767 series, and McDonnell Douglas MD-11 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Life Limits Section of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part No. (P/N)	Inspect per engine manual chapter
For CF6-80A Engines:		
Disk, Fan Rotor Stage 1	All	72-21-03 Paragraph 3. Fluorescent-Penetrant Inspect, and 72-21-03 Paragraph 4. Eddy Current Inspect.
Fan Forward Shaft	All	72-21-05 Paragraph 2. Magnetic Particle Inspect.
Fan Mid Shaft	All	72-24-01 Paragraph 2. Magnetic Particle Inspect.
Disk, HPC Rotor, Stage One	All	72-31-04 Paragraph 3. Fluorescent-Penetrant Inspect.
Disk, HPC Rotor, Stage Two	All	72-31-05 Paragraph 3. Fluorescent-Penetrant Inspect.
Spool, HPC Rotor, Stage 3-9	All	72-31-06 Paragraph 3. Fluorescent-Penetrant Inspect.
Disk, HPC Rotor, Stage 10	All	72-31-07 Paragraph 3. Fluorescent-Penetrant Inspect.
Spool, HPC Rotor, Stage 11-14	All	72-31-08 Paragraph 3.A. Fluorescent-Penetrant Inspect.
Rotating CDP Seal	All	72-31-10 Paragraph 3. Fluorescent-Penetrant Inspect.
Disk Shaft, HPT Rotor Stage One	All	72-53-02 Paragraph 3. Fluorescent-Penetrant-Inspect per 70-32-02, and 72-53-02 Paragraph 6.C. Eddy Current Inspection, and 72-53-02 Paragraph 6.D. Disk Bore Area Eddy Current Inspection.
Disk, HPT Rotor Stage Two	All	72-53-06 Paragraph 3. Fluorescent-Penetrant Inspection, and 72-53-06 Paragraph 6. Eddy Current Inspection of Rim Boltholes for Cracks, and 72-53-06 Paragraph 7. Disk Bore Area Eddy Current Inspection.
Disk, LPT Rotor Stage 1-4	All	72-57-02 Paragraph 3. Fluorescent-Penetrant Inspection.
Shaft, LPT Rotor	All	72-57-03 Paragraph 3. Fluorescent-Penetrant Inspection, and 72-57-03 Paragraph 6. Eddy Current Inspection.
For All CF6-80C2 Engines:		
Disk, Fan Rotor Stage One	All	Task 72-21-03-200-000-004 Fluorescent-Penetrant Inspection, and Task 72-21-03-200-000-008 Eddy Current Inspect Fan Rotor Disk Stage 1 Bore, Forward and Aft Hub Faces, and Bore Radii.

Part nomenclature	Part No. (P/N)	Inspect per engine manual chapter
Shaft, Fan Forward	All	Task 72-21-05-200-000-001 Fluorescent Penetrant Inspection, and Task 72-21-05-200-000-005 Vent Hole Eddy Current Inspection.
HPCR Stage 1 Disk	All	Task 72-31-04-200-000-002 Fluorescent Penetrant Inspection.
HPCR Stage 2 Disk	All	Task 72-31-05-200-000-002 Fluorescent Penetrant Inspection.
HPCR Stage 3-9 Spool	All	Task 72-31-06-200-000-001 Fluorescent Penetrant Inspection.
HPCR Stage 10 Disk	All	Task 72-31-07-200-000-001 Fluorescent Penetrant Inspection.
HPCR Stage 11-14 Spool/Shaft	All	Task 72-31-08-200-000-002 Fluorescent Penetrant Inspection.
No. 4 Bearing Rotating (CDP) Air Seal	All	Task 72-31-10-200-000-001 Fluorescent * Penetrant Inspection or Task 72-31-10-200-000-A01 Fluorescent Penetrant Inspection.
HPCR Stage 10-14 Spool/Shaft	All	Task 72-31-22-200-000-002 Fluorescent Penetrant Inspection.
Fan Mid Shaft	All	Task 72-24-01-200-000-003 Magnetic Particle Inspection.
Disk Shaft, HPT Rotor Stage One	All	Task 72-53-02-200-000-001 Fluorescent-Penetrant Inspect, and Task 72-53-02-200-000-005 Disk Rim Bolt Hole Eddy Current Inspection, and Task 72-53-02-200-000-006 Disk Bore Area Eddy Current Inspection, and Task 72-53-02-200-000-007 Disk Dovetail Slot Bottom Eddy Current.
Disk, HPT Rotor Stage Two	All	Task 72-53-06-200-000-002 Fluorescent-Penetrant Inspect, and Task 72-53-06-200-000-006 Disk Rim Bolt Hole Eddy Current Inspection Rim Boltholes, and Task 72-53-06-200-000-007 Disk Bore Area Eddy Current Inspection.
LPTR Stage 1-5 Disks	All	Task 72-57-02-200-000-001 Fluorescent-Penetrant Inspection.
LPTR Shaft	All	Task 72-57-03-200-000-002 Fluorescent-Penetrant Inspect, and Task 72-57-03-200-000-006 Eddy Current Inspection.
For CF6-80C2 Engines configured with the R88DT Turbine (Models CF6-80C2B2F, 80C2B4F, 80C2B6F, 80C2B7F, 80C2B8F):		
Disk Shaft, HPT Rotor Stage One (R88DT, No Rim Bolt Holes).	All	Task 72-53-16-200-000-001 Fluorescent-Penetrant Inspect, and Task 72-53-16-200-000-XXX Disk Bore Area Eddy Current Inspection.
Disk, HPT Rotor Stage Two (R88DT, No Rim Bolt Holes).	All	Task 72-53-18-200-000-002 Fluorescent-Penetrant Inspect, and Task 72-53-18-200-000-XXX Disk Bore Area Eddy Current Inspection.
Rotating Interstage Seal (R88DT)	All	Task 72-53-17-200-000-001 Fluorescent-Penetrant Inspect, and Task 72-53-17-200-000-XXX Seal Bore Area Eddy Current.
Forward Outer Seal (R88DT)	All	Task 72-53-21-200-000-001 Fluorescent-Penetrant Inspect, and Task 72-53-21-200-000-XXX Seal Bore Area Eddy Current.
For CF6-80E1 Engines:		
Disk, Fan Rotor Stage One	All	Sub Task 72-21-03-230-051 Fluorescent-Penetrant Inspection, and Sub Task 72-21-03-250-051 or 72-21-03-250-052 Disk Bore Eddy Current Inspection.
Shaft, Fan Forward	All	Sub Task 72-21-05-230-051 Fluorescent Penetrant Inspection, and Sub Task 72-21-05-250-051 Vent Hole Eddy Current Inspection.
Compressor Rotor, Stage 1 Disk	All	Sub Task 72-31-04-230-051 Fluorescent Penetrant Inspection.
Compressor Rotor, Stage 2 Disk	All	Sub Task 72-31-05-230-051 Fluorescent Penetrant Inspection.

Part nomenclature	Part No. (P/N)	Inspect per engine manual chapter
Compressor Rotor, Stage 3-9 Spool	All	Sub Task 72-31-06-230-051 Fluorescent Penetrant Inspection.
Compressor Rotor, Stage 10 Disk (Pre SB 72-0150).	All	Sub Task 72-31-07-230-051 Fluorescent Penetrant Inspection.
Compressor Rotor Spool/Shaft, Stage 11-14 (Pre SB 72-0150).	All	Sub Task 72-31-08-230-051 Fluorescent Penetrant Inspection.
Compressor Rotor Spool/Shaft, Stage 10-14 (SB 72-0150).	All	Sub Task 72-31-23-230-052 Fluorescent Penetrant Inspection.
Compressor Rotor No. 4 Bearing Rotating Air Seal (CDP Rotating Seal).	All	Sub Task 72-31-10-230-051 Fluorescent Penetrant Inspection.
HPT Disk/Shaft, Stage 1	All	Sub Task 72-53-02-230-051 Fluorescent-Penetrant Inspection, and Sub Task 72-53-02-250-051 Eddy Current Inspection, Rim Bolt Holes, and Sub Task 72-53-02-250-054 Eddy Current Inspection, Disk Bore Area.
HPT Disk, Stage 2	All	Sub Task 72-53-06-230-051 Fluorescent-Penetrant Inspection, and Sub Task 72-53-06-250-051 Eddy Current Inspection, Rim Bolt Holes, and Sub Task 72-53-06-250-054 Eddy Current Inspection, Disk Bore Area.
LPT Rotor Shaft	All	Sub Task 72-55-01-240-051 Magnetic Particle Inspect.
LPT Disks, Stages 1-5	All	Sub Task 72-57-02-230-051 Fluorescent-Penetrant Inspect.
LPT Rotor Torque Cone	All	Sub Task 72-57-03-220-051 Fluorescent-Penetrant Inspect.
For CF6-80E1 Engines configured with the R88DT Turbine:		
Disk Shaft, HPT Rotor Stage 1 (R88DT, No Rim Bolt Holes).	All	Sub Task 72-53-16-230-052 Fluorescent-Penetrant Inspect, and Sub Task 72-53-16-250-XXX Disk Bore Area Eddy Current Inspection.
Disk, HPT Rotor Stage 2 (R88DT, No Rim Bolt Holes).	All	Sub Task 72-53-18-230-051 Fluorescent-Penetrant Inspect, and Sub Task 72-53-18-250-XXX Disk Bore Area Eddy Current Inspection.
HPT Rotor Rotating Interstage Seal (R88DT)	All	Sub Task 72-53-17-230-051 Fluorescent-Penetrant Inspect, and Sub Task 72-53-17-250-XXX Seal Bore Area Eddy Current.
HPT Rotor Forward Outer Seal (R88DT)	All	Sub Task 72-53-21-230-051 Fluorescent-Penetrant Inspect, and Sub Task 72-53-21-250-XXX Seal Bore Area Eddy Current.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

- (i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual; and
- (ii) The part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Life Limits Section of the manufacturer's ICA.

Alternative Methods of Compliance

(c) 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 Engine Certification Office (ECO). Operators must submit their

requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

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

Continuous Airworthiness Maintenance Program

(d) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)] of this chapter must maintain records of the mandatory inspections that result from revising the Life Limits Section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for

preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations [14 CFR 121.380 (a) (2) (vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

Issued in Burlington, Massachusetts, on October 1, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate,
Aircraft Certification Service.

[FR Doc. 01-25080 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-38-AD]

RIN 2120-AA64

Airworthiness Directives; Airworthiness Directives; CFM International (CFMI) CFM56-2, -2A, -2B, -3, -3B, -3C, -5, -5B, -5C, and -7B Series Turbofan Engines

AGENCY: Federal Aviation
Administration, DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), that is applicable to certain CFM International (CFMI) CFM56 series turbofan engines, that currently requires revisions to the Airworthiness Limitations Section of applicable Engine Shop Manuals (ESM's) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 4, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-38-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location by appointment between 8:00 a.m. and 4:30

p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7138, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above; will be considered before taking action on the proposed rule. The proposals contained in this action 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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-ANE-38-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-38-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On June 13, 2000, the FAA issued AD 2000-12-01, Amendment 39-11779 (65 FR 37031, June 13, 2000), to require revisions to the Airworthiness Limitations Section of the applicable Engine Shop Manuals (ESM's) for CFMI CFM56-2, -2A, -2B, -3, -3B, -3C -5, -5B, -5C, and -7B series turbofan engines by adding additional focused inspection procedures and increasing

the applicability of the CFM56 engine models requiring enhanced inspection of selected critical life-limited parts at each piece-part exposure.

Additional Inspection Procedures

Since the issuance of that AD, CFMI has identified additional critical life-limited parts requiring enhanced inspections and has developed additional focused inspection procedures applicable to the High Pressure Turbine (HPT) disk and the HPT front rotating air seal. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the Airworthiness Limitations Section of the applicable ESMs to incorporate additional inspection requirements.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001-12-01 to add additional critical life-limited parts requiring enhanced inspections at piece part opportunity. The inspections would be required at each piece-part opportunity.

Economic Analysis

The FAA estimates that 5,100 CFM56 engines installed on airplanes of US registry would be affected by this proposed AD and that there are approximately 2, 300 piece part annual inspections that would be required. It would take approximately 2, 775 work hours to accomplish these inspections. The average labor rate is \$60 per work hour. The total estimated annual cost of the proposed new inspections on US operators is expected to be approximately \$166,500.

Regulatory Analysis

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

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 removing Amendment 39-11779 (65 FR 3731, June 13, 2000), and by adding a new airworthiness directive, to read as follows:

CFM International: Docket No. 98-ANE-38-AD. Supersedes AD 2000-12-01, Amendment 39-11779.

Applicability: CFM International (CFMI) CFM56-2, -2A, -2B, -3, -3B, -3C, -5, -5B, -5C, and -7B series turbofan engines, installed on but not limited to McDonnell Douglas DC-8 series, Boeing 737 series, Airbus Industrie A319, A320, A321, and A340 series, as well as Boeing E-3, E-6, and KC-135 (military) series airplanes.

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

been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (chapter 05-00-00) of Engine Shop Manual (ESM) CFMI-TP.SM.4, for CFM56-2 series engines, ESM CFMI-TP.SM.6, for CFM56-2A/-2B series engines, ESM CFMI-TP.SM.5, for CFM56-3/-3B/-3C series engines, ESM CFMI-TP.SM.7 for CFM56-5 series engines, ESM CFMI-TP.SM.9 for CFM56-5B series engines, ESM CFMI-TP.SM.8 for CFM56-5C series engines, and ESM CFMI-TP.SM.10 for CFM56-7B series engines, and for air carrier operations, revise the approved continuous airworthiness maintenance program, by adding the following:

“MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the Inspection/Check section instructions provided in the applicable manual sections listed below:

Engine models	Part name	Engine Manual Section	Inspection
All	Fan Disk (All Part Number (P/N))	72-21-03	Disk Fluorescent Penetrant Inspection (FPI) and Disk Bore and Dovetail Eddy Current Inspection (ECI).
All	Fan Shaft (All P/N)	72-22-01	Magnetic Penetrant Inspection (MPI).
All	HPT Disk (All P/N)	75-52-02	FPI, Disk Bore ECI and Bolt Hole(s) ECI.
All	HPT Front Rotating Air Seal (All P/N)	72-52-03	FPI, Seal Bore ECI and Bolt Hole(s) ECI.
All	HPC Stage 1-2 Spool (All P/N)	72-31-04	FPI.
All	HPC Stage 3 Disk (All P/N)	72-31-05	FPI.
All	HPC Stage 4-9 Spool (All P/N)	72-31-06	FPI.
All	HPC Front Shaft (All P/N)	72-31-07	FPI.
All	HPC Compressor Rear (CDP) Air Seal (All P/N)	72-52-03	FPI.
All	LPT Stage 1 Disk	72-54-03	FPI.
All	LPT Stage 2 Disk	72-54-03	FPI.
All	LPT Stage 3 Disk	72-54-03	FPI.
All	LPT Stage 4 Disk	72-54-03	FPI.
All	LPT Rotor Support	72-54-05	FPI.
All	LPT Shaft	72-55-01	FPI.
All	LPT Stub Shaft	72-52-03	FPI.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these

mandatory inspections shall be performed only in accordance with the Time Limits section of the manufacturer's ESM.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)] of this chapter must maintain records of the mandatory inspections that result from revising the Airworthiness Limitations Section of the applicable ESM and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380 (a)(2)(vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the ESM changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the applicable ESM.

Issued in Burlington, Massachusetts, on October 1, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01-25078 Filed 10-4-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-41-AD]

RIN 2120-AA64

Airworthiness Directives; General Electric Company CF6-6, CF6-45, and CF6-50 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to General Electric Company (GE) CF6-6, CF6-45,

and CF6-50 series turbofan engines, that currently requires revisions to the Time Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required inspection of selected critical life-limited parts at each piece-part exposure. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. A Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 4, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-41-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7192, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted 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-ANE-41-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, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-41-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On April 14, 2000, the FAA issued AD 2000-08-11, Amendment 39-11697 (65 FR 21636, April 24, 2000), to require revisions to the Time Limits Section of the Manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) CF6-6, CF6-45, and CF6-50 series turbofan engines to include required inspection of selected critical life-limited parts at each piece-part exposure.

Additional Inspection Procedures

Since the issuance of that AD, a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or

develop on other products of this same type design, the proposed AD would supersede AD 2000-08-11 to add additional inspections for certain HPC and LPT components at each piece-part opportunity.

Economic Impact

The FAA estimates that 730 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 10 work hours per engine to accomplish the required new inspections, and that the average labor rate is \$60 per work hour for a total approximate cost of \$600 per engine. It is further estimated that there will be about 299 shop visits per year that result in piece-part exposure of the additional affected components. Based on these figures, the total cost impact of the additional inspections on U.S. operators is estimated to be \$179,400.

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 FR11034, 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 removing Amendment 39-11697 (65 FR 21636, April 24, 2000), and by adding a new airworthiness directive, to read as follows:

General Electric Company: Docket No. 98-ANE-41-AD. Supersedes AD 2000-08-11, Amendment 39-11697.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6-6, CF6-45, and CF6-50 series turbofan engines, installed on but not limited to Airbus Industrie A300 series, Boeing 747 series, and McDonnell Douglas DC-10 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) 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 already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, do the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Time Limits Section of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part No. (P/N)	Inspect per engine shop manual chapter
For CF6-6 Engines:		
Disk, Fan Rotor Stage One	All	72-21-03 Paragraph 2.F. or Paragraph 2.A.B. Fluorescent-Penetrant Inspect, and 72-21-03 Paragraph 3 or 3.A. Eddy Current Inspection.
Fan Forward Shaft	All	72-21-05 Paragraph 1. Magnetic Particle Inspection.
Fan Mid Shaft	All	72-24-01 Paragraph 1. and Paragraph 2. Magnetic Particle Inspection.
Disk, HPC Rotor, Stage 1	All	72-31-04 Paragraph 1. Fluorescent Penetrant Inspection.
Disk, HPC Rotor, Stage 2	All	72-31-05 Paragraph 1. Fluorescent Penetrant Inspection.
Spool, HPC Rotor, Stages Three thru Nine	All	72-31-06 Paragraph 1. Fluorescent Penetrant Inspection.
Disk, HPC Rotor, Stage 10	All	72-31-07 Paragraph 1. Fluorescent Penetrant Inspection.
Spool, HPC Rotor, Stages 11-13	All	72-31-08 Paragraph 1. Fluorescent Penetrant Inspection.
Spool, HPC Rotor, Stages 14-16	All	72-31-08 Paragraph 1. Fluorescent Penetrant Inspection.
HPC Rear Shaft	All	72-31-09 Paragraph 1. and Paragraph 1.E. Fluorescent Penetrant Inspection.
No. 4R Bearing Rotating (CDP) Air Seal	All	72-31-10 Fluorescent Penetrant Inspection.
No. 4R Bearing Rotating (CDP) Air Seal Support	All	72-31-10 Fluorescent Penetrant Inspection.

Part nomenclature	Part No. (P/N)	Inspect per engine shop manual chapter
Disk, HPT Rotor Stage One	All	72-53-03 Paragraph 1. Fluorescent-Penetrant Inspect, and 72-53-03 Paragraph 4. Eddy Current Inspection of the HPTR Disk Rim Boltholes and 72-53-03 Paragraph 5. Disk Bore Area Eddy Current Inspection.
Disk, HPT Rotor Stage Two	All	72-53-04 Paragraph 1. Fluorescent-Penetrant Inspect, and 72-53-04 Paragraph 4. Eddy Current Inspection of the Stage 2 HPTR Disk Rim Boltholes and 72-53-04 Paragraph 5. Eddy Current Inspection of the Stage 2 Disk Inner Boltholes and 72-53-04 Paragraph 6. Disk Bore Area Eddy Current Inspection.
Disk, LPT Rotor, Stages One thru Five	All	72-57-02 Paragraph 1. Fluorescent Penetrant Inspection.
LPT Forward Shaft	All	72-57-03 Paragraph 1. Fluorescent Penetrant Inspection.
LPT Rear Shaft	All	72-57-04 Paragraph 1. Fluorescent Penetrant Inspection.
For CF6-45, CF6-50 Engines:		
Disk, Fan Rotor Stage One	All	Task 72-21-03-230-051 Fluorescent Penetrant Inspection., and Task 72-21-03-250-002-052 Manual Eddy Current Inspection or 72-21-03-250-003-053 Automated Eddy Current Inspection.
Forward Shaft, Fan	All	Task 72-21-05-240-056 Magnetic Particle Inspection.
Mid Shaft, Fan	All	Task 72-24-01-240-001-051 Magnetic Particle Inspection.
Disk, HPC Rotor Stage 1	All	Task 72-31-04-230-001-051 Fluorescent Penetrant Inspection.
Disk, HPC Rotor Stage 2	All	Task 72-31-05-230-001-051 Fluorescent Penetrant Inspection.
Spool, HPC Rotor Stages 3-9	All	Task 72-31-06-230-001-063 Fluorescent Penetrant Inspection.
Disk, HPC Rotor Stage 10	All	Task 72-31-07-230-001-051 Fluorescent Penetrant Inspection.
Spool, HPC Rotor Stages 11-13	All	Task 72-31-08-230-001-051 Fluorescent Penetrant Inspection.
Disk, HPC Rotor Stage 14	All	Task 72-31-07-230-001-055 Fluorescent Penetrant Inspection.
Rear Shaft, HPC Rotor	All	Task 72-31-09-230-001-051 Fluorescent Penetrant Inspection.
Spool/Shaft, HPC Rotor Stages 11-14	All	Task 72-31-26-230-001-052 Fluorescent Penetrant Inspection.
Rotating (CDP) Air Seal, No. 4R Bearing	All	Task 72-31-10-230-001-051 Fluorescent Penetrant Inspection.
Rotating (CDP) Air Seal Support, No. 4R Bearing ..	All	Task 72-31-10-230-001-051 Fluorescent Penetrant Inspection.
Disk, HPT Rotor Stage One	All	Task 72-53-03-230-001-059 Fluorescent Penetrant Inspect Disk, and Task 72-53-03-250-052 Eddy Current Inspection of the HPTR Stage 1 Rim Boltholes, and Task 72-53-03-250-060 Disk Bore Area Eddy Current Inspection.
Disk, HPT Rotor Stage Two	All	Task 72-53-04-230-001-057 Fluorescent Penetrant Inspect Disk, and Task 72-53-04-250-053 Eddy Current Inspection of the HPTR Stage 2 Rim and/or Inner Boltholes, and Task 72-53-04-250-060 Disk Bore Area Eddy Current Inspection.
Disks, LPT Rotor Stages 1-4	All	Task 72-57-02-230-001-051 Fluorescent Penetrant Inspection.
Forward Shaft, LPTR	All	Task 72-57-03-230-001-057 Fluorescent Penetrant Inspection.
Rear Shaft, LPTR	All	Task 72-57-04-230-001-051 Fluorescent Penetrant Inspection.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in

accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part

opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Time Limits Section of the manufacturer's ICA.

Alternative Methods of Compliance

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

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

Continuous Airworthiness Maintenance Program

(d) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)] must maintain records of the mandatory inspections that result from revising the Time Limits Section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations [14 CFR 121.380 (a) (2) (vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine shop manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine shop manuals.

Issued in Burlington, Massachusetts, on September 25, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01-25077 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-59-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 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 McDonnell Douglas Model MD-11 series airplanes. This proposal would require installation of protective sleeving on the right emergency alternating current wire assembly of the overhead switch panel. This action is necessary to ensure that protective sleeving is installed on the right emergency alternating current (AC) wire assembly of the overhead switch panel. Lack of such sleeving could result in loss of redundant electrical power during certain cockpit overhead wiring faults. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-59-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. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-59-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received. Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-59-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.

2001-NM-59-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware that protective sleeving was not installed during production of McDonnell Douglas Model MD-11 series airplanes, fuselage numbers 0527 through 0646 inclusive. A production change improperly provided procedures for removing the sleeving. The protective sleeving provides mechanical segregation for the right emergency alternating current (AC) wire assembly of the overhead switch panel. Lack of protective sleeving on the right emergency AC wire assembly of the overhead switch panel, if not corrected, could result in loss of redundant electrical power during certain cockpit overhead wiring faults.

These findings are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin MD11-24-197, dated May 16, 2001, which describes procedures for installation of protective sleeving on the right emergency AC wire assembly of the overhead switch panel. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 119 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of parts. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$8,160, or \$240 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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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:

McDonnell Douglas: Docket 2001-NM-59-AD.

Applicability: Model MD-11 series airplanes, as listed in Boeing Service Bulletin MD11-24-197, dated May 16, 2001; 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 ensure that protective sleeving is installed on the right emergency alternating current (AC) wire assembly of the overhead switch panel, accomplish the following:

Installation

(a) Within 18 months after the effective date of this AD, install protective sleeving on the right emergency wire assembly of the overhead switch panel, per Boeing Service Bulletin MD11-24-197, dated May 16, 2001.

Alternative Methods of Compliance

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

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

Special Flight Permit

(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.

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25070 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2001-NM-57-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 series airplanes, that currently requires a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires; and corrective action, if necessary. This action would require an inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires, and repair, if necessary. This action also would require installing a grommet around the lower edge of the feed-through; replacing the support bracket with a new bracket; and relocating the support clamp of the wire bundle; as applicable. The proposed AD also expands the applicability of the existing AD to include additional airplanes. This proposal is prompted by the FAA's determination that the existing support bracket and the location of the support clamp of the wire bundle may not adequately preclude the wire bundle contained in the feed-through behind the first observer's station from contacting the bottom portion of the feed-through. The actions specified by the proposed AD are intended to prevent such contact, which could cause cable chafing, electrical arcing, smoke, or fire in the cockpit.

DATES: Comments must be received by November 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-57-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-57-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-57-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. 2001-NM-57-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On February 10, 2000, the FAA issued AD 2000-03-13, amendment 39-11572 (65 FR 8028, February 17, 2000), applicable to certain McDonnell Douglas Model MD-11 series airplanes, to require a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires; and corrective action, if necessary. That action was prompted by a report indicating that the wire bundle contained in the feed-through behind the first observer's station was contacting the bottom portion of the feed-through. The requirements of that AD are intended to prevent such contact, which could cause cable chafing, electrical arcing, smoke, or fire in the cockpit.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000-03-13, the FAA, in conjunction with Boeing, has determined that the existing support bracket and the location of the support clamp of the wire bundle may not adequately preclude the wire bundle contained in the feed-through behind the first observer's station from contacting the bottom portion of the feed-through.

Boeing also has informed the FAA that it inadvertently excluded several airplane manufacturer's fuselage numbers from the effectivity listing of McDonnell Douglas Alert Bulletin MD11-24A041, Revision 01, dated April 26, 1999, which was referenced in AD 2000-03-13 as the appropriate source of service information. The FAA has determined that these excluded airplanes are subject to the same unsafe condition addressed in this proposed AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11-24A041, Revision 02, dated April 11, 2001, which describes procedures for a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires, and repair, if necessary. The service bulletin also describes procedures for installing a grommet around the lower edge of the feed-through; replacing the support bracket with a new bracket; and relocating the support clamp of the wire bundle; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000-03-13 to require a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires, and repair, if necessary. The proposed AD also would require installing a grommet around the lower edge of the feed-through; replacing the support bracket with a new bracket; and relocating the support clamp of the wire bundle; as applicable. The proposed AD also expands the applicability of the existing AD to include additional airplanes. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 193 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 62 airplanes of U.S. registry would be affected by this proposed AD.

The new actions that are proposed in this AD action would take approximately 2 work hours per

airplane to accomplish, at an average labor rate of \$60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be \$7,440, or \$120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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 removing amendment 39-11572 (65 FR 8028, February 17, 2000), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2001-NM-57-AD. Supersedes AD 2000-03-13, Amendment 39-11572.

Applicability: Model MD-11 series airplanes, as listed in Boeing Alert Service Bulletin MD11-24A041, Revision 02, dated April 11, 2001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the wire bundle contained in the feed-through from contacting the bottom of the feed-through, which could cause cable chafing, electrical arcing, and smoke or fire in the cockpit; accomplish the following:

Inspection

(a) Within 1 year after the effective date of this AD, do a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires, in accordance with Boeing Alert Service Bulletin MD11-24A041, Revision 02, dated April 11, 2001.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Condition 1: No Damaged or Chafed Wire

(b) If no damaged or chafed wire is detected during the detailed visual inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, per Boeing Alert Service

Bulletin MD11-24A041, Revision 02, dated April 11, 2001.

(1) For airplanes identified as Group 1 in the service bulletin: Replace the support bracket with a new bracket, and relocate the support clamp of the wire bundle, per Figure 3 of the service bulletin. The grommet around the lower edge of the feed-through must be installed as indicated in Figure 3 of the service bulletin.

(2) For airplanes identified as Group 2 in the service bulletin: Install a grommet around the lower edge of the feed-through; replace the support bracket with a new bracket; and relocate the support clamp of the wire bundle, per Figure 2 of the service bulletin.

Condition 2: Any Damaged or Chafed Wire

(c) If any damaged or chafed wire is detected during the detailed visual inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraph (c)(1) or (c)(2) of this AD, as applicable, per Boeing Alert Service Bulletin MD11-24A041, Revision 02, dated April 11, 2001.

(1) For airplanes identified as Group 1 in the service bulletin: Repair wiring; replace the support bracket with a new bracket; and relocate the support clamp of the wire bundle, per Figure 3 of the service bulletin. The grommet around the lower edge of the feed-through must be installed as indicated in Figure 3 of the service bulletin.

(2) For airplanes identified as Group 2 in the service bulletin: Repair wiring; install grommet around lower edge of the feed-through; replace the support bracket with a new bracket; and relocate the support clamp of the wire bundle, per Figure 2 of the service bulletin.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000-03-13, amendment 39-11572, are approved as alternative methods of compliance with this AD.

Special Flight Permits

(e) 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.

Issued in Renton, Washington, on October 1, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25069 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

[Docket No: 990608154-9154-01]

RIN 0648-A036

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; amendments; reopening of comment period.

SUMMARY: On January 5, 1996, the National Oceanic and Atmospheric Administration (NOAA) promulgated final regulations for the assessment of natural resource damages pursuant to section 1006(e)(1) of the Oil Pollution Act of 1990. The final regulations were challenged, pursuant to section 1017(a) of OPA. On November 18, 1997, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling on the final regulations (*General Electric Co., et al., v. Commerce*, 128 F.3d 767 (D.C. Cir. 1997)). NOAA proposed amendments to the final regulations that address the Court's remand as well as other clarifying and technical issues (66 FR 39464). Today's notice reopens and extends the comment period on the proposed amendments by thirty (30) calendar days.

DATES: Written comments must be received no later than November 5, 2001.

ADDRESSES: Written comments are to be submitted to: Eli Reinharz, c/o Office of General Counsel/Natural Resources, 1315 East-West Highway, Room #15132, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Eli Reinharz, 301-713-3038, ext. 193 (FAX: 301-713-4387; e-mail: eli.reinharz@noaa.gov), or Linda Burlington, 301-713-1332 (FAX: 301-713-1229; e-mail: Linda.B.Burlington@noaa.gov).

SUPPLEMENTARY INFORMATION: On July 31, 2001 (61 FR 39464), NOAA published proposed amendments to the final regulations for the assessment of

natural resource damages as required by the Oil Pollution Act of 1990. General Electric and other industry groups challenged the final regulations pursuant to section 1017(a) of OPA. On November 18, 1997, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling on the final regulations (*General Electric Co., et al., v. Commerce*, 128 F.3d 767 (D.C. Cir. 1997)). The Court remanded to NOAA for further agency decisionmaking: (1) authorization for the removal of residual oil; and (2) the scope of authorization for recovery of legal costs. NOAA also proposed clarifying and technical amendments in other parts of the regulations.

NOAA requested comments to its proposed amendments by September 29, 2001. NOAA has received requests to extend the comment period on the proposed amendments. Since NOAA wants to encourage a thorough and thoughtful review of all components of the proposed amendments, the comment period is being reopened and extended an additional thirty (30) calendar days.

Dated: September 28, 2001.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01-24920 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-JE-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37, 161, 250, 284, 358

[Docket No. RM01-10-000]

Standards of Conduct for Transmission Providers; Notice of Proposed Rulemaking

September 27, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to promulgate new standards of conduct regulations that apply uniformly to natural gas pipelines and transmitting public utilities (jointly referred to as transmission providers) that are currently subject to the gas standards of conduct and the electric standards of conduct. The Commission is proposing to adopt one set of standards of conduct to govern the relationships between regulated transmission providers and their energy affiliates, broadening the

definition of an affiliate covered by the standards of conduct.

COMMENT DATE: Comments on the proposed rulemaking are due on or before November 19, 2001.

ADDRESSES: File written comments on the proposed rulemaking with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments should reference Docket No. RM01-10-000. Comments may be filed electronically or by paper (an original and 16 copies, with an accompanying computer diskette in the prescribed format requested.)

FOR FURTHER INFORMATION CONTACT: Demetra E. Anas, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-0178.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission is proposing to promulgate new standards of conduct regulations that would apply uniformly to natural gas pipelines and transmitting public utilities (jointly referred to as transmission providers) that are currently subject to the gas standards of conduct in part 161 of the Commission's regulations and the electric standards of conduct in part 37 of the Commission's regulations.¹ In light of the changing structure of the energy industry, the Commission is proposing to adopt one set of standards of conduct to govern the relationships between regulated transmission providers and all their energy affiliates, broadening the definition of an affiliate covered by the standards of conduct, from the more narrow definition in the existing regulations.

Electric transmission providers that do not control transmission facilities and participate in Commission approved regional transmission organizations (RTOs) under Order No. 2000,² would be able to request an exemption from these proposed standards of conduct.

The proposed standards of conduct would be codified in a new Subchapter S, the current standards of conduct at

parts 37 and 161 would be deleted, and conforming changes would also be made to other regulations as necessary.

I. Current Regulations

The current standards of conduct restrict the ability of interstate natural gas pipelines and electric utilities (transmission providers) to give their marketing affiliates or wholesale merchant functions undue preferences over non-affiliated transportation customers.³ Both gas and electric standards of conduct rely on similar principles to prevent market power over transmission from being used in competitive commodity markets by: (1) Separating employees engaged in transmission services from those engaged in commodity marketing services, i.e., marketing or sales of natural gas or electric energy; and (2) ensuring that all transmission customers, affiliated and non-affiliated, are treated on a non-discriminatory basis. The Commission is not proposing to change these principles. Nor is the Commission proposing to codify the electric codes of conduct⁴ that guard against discrimination by power marketers or other affiliates that request market-based rate authority. As discussed later, the Commission is soliciting comments whether these electric codes of conduct should be codified.

In 1987, when the gas pipeline standards of conduct were promulgated, the natural gas industry had witnessed a rapid growth of marketing affiliates and the Commission was concerned that pipelines were giving their marketing affiliates preferential treatment. As a result, the Commission issued the standards of conduct to give guidance on how pipelines can conduct transportation transactions on a non-discriminatory basis.⁵ The Commission

reserved the right to impose structural remedies, such as divestiture or divestiture, in specific cases where the circumstances demonstrate they are required.

Five years ago in Order No. 888, the Commission found that unduly discriminatory and anti-competitive practices existed in the electric industry and that transmission-owning utilities had discriminated against others seeking transmission access. Thus, the Commission required electric transmission providers to provide open-access transmission service.⁶ For the same reasons, the Commission simultaneously promulgated electric standards of conduct in Order No. 889.⁷ The electric standards of conduct reflected the Commission's experiences

FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,934 (Dec. 20, 1991), *reh'g denied*, 57 FR 5815 (Feb. 18, 1992) 58 FERC ¶ 61,139 (Feb. 10, 1992); *Tenneco Gas v. FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497-D, *order on remand and extending sunset date*, 57 FR 58978 (Dec. 14, 1992), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,958 (Dec. 4, 1992); Order No. 497-E, *order on reh'g and extending sunset date*, 59 FR 243 (Jan. 4, 1994), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,987 (Dec. 23, 1993); Order No. 497-F, *order denying reh'g and granting clarification*, 59 FR 15336 (Apr. 1, 1994), 66 FERC ¶ 61,347 (Mar. 24, 1994); and Order No. 497-G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,996 (June 17, 1994).

See also Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,997 (June 17, 1994); Order No. 566-A, *order on reh'g*, 59 FR 52896 (Oct. 20, 1994), 69 FERC ¶ 61,044 (Oct. 14, 1994); Order No. 566-B, *order on reh'g*, 59 FR 65707 (Dec. 21, 1994), 69 FERC ¶ 61,334 (Dec. 14, 1994); and Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (Aug. 12, 1998), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,064 (July 30, 1998).

⁶ Promoting Wholesale Competition Through Open Access Non-Discrimination Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,036 (Apr. 24, 1996) at 31,692; *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,048 (Mar. 4, 1997); *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *off'd in relevant part sub nom.*, Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *cert. granted*, 69 U.S.L.W. 3574 (Nos. 00-568 (in part) and 00-809), *cert. denied* (No. 00-800) (U.S. Feb. 26, 2001).

⁷ Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,035 (Apr. 24, 1996); Order No. 889-A, *order on reh'g*, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,049 (Mar. 4, 1997); Order No. 889-B, *reh'g denied*, 62 FR 64715 (Dec. 9, 1997), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,253 (Nov. 25, 1997).

³ Section 4 of the Natural Gas Act (NGA), 15 U.S.C. 717c (1994), states that no natural gas company shall make or grant an undue preference or advantage with respect to any transportation or sale of natural gas subject to the Commission's jurisdiction. See also section 5 of the NGA, 15 U.S.C. 717d (1994). Similarly, under section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (1994), no public utility shall make or grant an undue preference with respect to any transmission or sale subject to the Commission's jurisdiction. See also section 205 of the FPA, 16 U.S.C. 824e (1994).

⁴ See e.g., Heartland Energy Services, Inc., et al., 68 FERC ¶ 61,223 at 62,064-65 (1994).

⁵ Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,820 (June 1, 1988); Order No. 497-A, *order on reh'g*, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,868 (Dec. 15, 1989); Order No. 497-B, *order extending sunset date*, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,908 (Dec. 13, 1990); Order No. 497-C, *order extending sunset date*, 57 FR 9 (Jan. 2, 1992),

¹ The gas standards of conduct are codified at part 161 of the Commission's regulations, 18 CFR part 161 (2001), and the electric standards of conduct are codified at § 37.4 of the Commission's regulations, 18 CFR 37.4 (2001).

² Regional Transmission Organizations, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs., Regulation Preambles July 1999-December 2000 ¶ 31,089 (Dec. 20, 1999), *order on reh'g*, Order No. 2000-A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs., Regulation Preambles 1996-2000 ¶ 31,092 (Feb. 25, 2000), *petitions for review pending sub nom.*, Public Utility District No. 1 of Snohomish County, Washington v. FERC (D.C. Cir., Apr. 24, 2000 (Nos. 00-1174, et al.)).

with implementation of the gas standards of conduct. One significant difference from the gas standards of conduct is that the electric standards of conduct do not prohibit transmission providers from assigning the responsibility for making purchases to serve bundled retail customers to the transmission operations and reliability function.⁸

Significant changes have occurred since the standards of conduct were first adopted. In the gas industry, these changes include unbundling, capacity release, and e-commerce. Fourteen years ago, pipelines were primarily affiliated with marketers, whereas in today's world, as a result of growth and consolidations, gas pipeline companies have a much wider array of affiliates in all sectors of the energy business. The market has undergone a transformation from purchases and sales of the commodity—natural gas—to sophisticated, lightning-speed transactions involving both physical and financial transactions by marketing and non-marketing gas pipeline affiliates. The gas industry has experienced consolidations in every sector—pipelines, producers, marketers, LDC/utilities and industrials. Examples are the mergers of El Paso Energy Corporation, Sonat Inc. and the Coastal Corporation or the acquisitions by the Enron Corporation. Marketing affiliates and non-marketing affiliates, today, offer a variety of new services, such as bundled sales, asset management, price hedging, risk management, and electronic commodity trading.

Similarly, now that the electric industry has been providing open-access service for several years, changes in the electric industry are occurring, e.g., the increased number of power marketers with market-based rates, an increased market for available transmission capacity, and increased number of power transactions and new and different uses of the transmission grid. Electric power is evolving into a more liquid, transparent commodity and its sale into a fast-paced marketplace, particularly with the development of on-line trading. The electric industry has witnessed large increases in the number of power marketers and independent generation facility developers entering the marketplace. Trade in bulk power markets has continued to increase significantly and the Nation's transmission grid is being used more heavily and in new ways. The electric market participants are also changing: there are more lightly regulated entities, such as power

marketers and generation facilities, that are affiliated with traditional regulated entities (both gas and electric transmission providers), as well as more unaffiliated unregulated entities.

Not only are the affiliated entities changing in size and scope, so are the transmission providers. The energy industry has experienced an increase in merger activities, as well as a convergence of the gas and electric industries.⁹ These industry changes mean that pipelines and their affiliates not only deal in gas, but also in power, much of which is generated using natural gas.

The Commission is concerned that a transmission provider's market power could be transferred to its affiliated businesses because the existing rules do not cover all affiliate relationships.¹⁰ For example, when Dominion Resources Inc. (an electric transmission provider with several affiliated power projects and generating plants) proposed to merge with Consolidated Natural Gas Company (CNG) (a natural gas pipeline with several affiliated LDCs), the Commission was concerned that the merger could adversely affect competition.¹¹ Specifically, the merged entity could exercise vertical market power in delivered natural gas service to raise costs of rival generators or inhibit entry of new generators into bulk power markets. Therefore, the Commission required, as a condition of approving the merger, that the merged company apply the gas pipeline standards of conduct to all of its energy affiliates or submit a revised competitive merger analysis.

Although the current standards of conduct limit transmission providers' ability to make or grant undue preferences to the wholesale merchant function of their businesses (in the electric area) or to their marketing affiliates, they do not cover the transmission providers' other non-marketing affiliates. Non-marketing affiliates compete against non-affiliates for transmission services, in capacity release transactions, in power sales, and

in siting new generation.¹² For example, in the gas industry, non-marketing affiliates of natural gas pipelines can control large amounts of capacity on their affiliated pipelines, yet they are not covered by the current standards of conduct because they do not actually hold pipeline capacity (functioning instead as asset managers) or they fit within one of the existing exceptions, e.g., producers, gatherers and local distribution companies. 18 CFR 161.2 (2001).

The current standards of conduct do not address the sharing of confidential shipper information and transportation information with all energy affiliates. For example, if a pipeline informs its affiliated asset manager about a proposed pipeline expansion or upcoming curtailment, the current standards of conduct do not require the pipeline to make that information available to non-affiliates, unless the asset manager is a marketing affiliate. Nor do the current standards address whether an electric transmission provider can share with its generator affiliates information about generation projects planned by competitors. Sharing of information between transmission providers and energy affiliates undermines and frustrates the efforts of businesses to buy, sell, build, grow, and provide competitive alternatives in markets where there are concerns about market power.

On March 15, 2001, Commission staff hosted a technical conference in Docket No. PL00-1-000 which addressed whether current regulatory policy with respect to pipeline affiliates and non-affiliates, as well as asset managers and agents, should be revised to reflect the changing nature of the natural gas market and whether the Commission should consider revising the regulations pertaining to pipeline affiliates. The comments received suggest that since non-marketing pipeline affiliates, which are offering a wide variety of transportation-related services, are not subject to the current standards of conduct, transmission providers have the ability to grant their non-marketing pipeline affiliates undue preferences. The commenters also expressed concern that the regulated entity can transfer all the benefits of its regulated (monopolistic) status to its unregulated non-marketing affiliate, which can then use these benefits to reap unregulated profits from the public. See e.g., Comments in Docket No. PL00-1-000

⁹In the past six years, the Commission received 61 electric merger applications, 53 of which have been approved, two are pending and six have been withdrawn or terminated. Several of the recent mergers joined gas and electric companies, such as NiSource Inc. with Columbia Energy Group, Koch Energy Trading Inc. with Entergy Power Marketing Corp., and Dominion Resources, Inc. with Consolidated Natural Gas Company.

¹⁰Conversely, a transmission provider's market power could also be increased by virtue of the affiliate's business.

¹¹Dominion Resources, Inc. and Consolidated Natural Gas Co., 89 FERC ¶ 61,162 (1999), order on compliance filing, 91 FERC ¶ 61,140 (2000), order denying reh'g, 93 FERC ¶ 61,214 (2000), appeal pending, (D.C. Cir. Jan. 19, 2001 (No. 01-1169)).

¹²A review of the data from the January 2001 Gas Index of Customers shows that marketing/brokering affiliates hold about 18% of the affiliated pipeline capacity and non-marketing affiliates hold an additional 19% of the affiliated pipelines' capacity.

⁸Order No. 889-A at 30,560.

submitted by Dynegy, Inc. and Amoco Production Company and BP Energy Company.

II. Proposed Standards of Conduct

The proposed standards of conduct combine, revise and conform the current gas and electric standards of conduct found in parts 37 and 161 of the Commission's regulations. The Commission proposes to change the existing regulations to reflect the evolving energy market. The Commission proposes to consolidate the standards of conduct and apply them uniformly to all transmission providers, i.e., the entities that are currently subject to the gas and electric standards of conduct under part 161 and part 37.

In Order No. 2000, the Commission expressed a continuing concern about undue discrimination in electric transmission services and concluded that the formation of regional transmission organizations (RTOs) would eliminate undue discrimination in electric transmission services that can occur when the operation of the electric transmission system remains in the control of a vertically integrated utility.¹³ Therefore, the proposed standards of conduct would exempt a transmission provider that itself is a Commission-approved RTO, but would not automatically exempt transmission providers that are members of RTOs. Depending on how an RTO is structured, there may be a continuing need to apply the standards of conduct to electric transmission providers that are members of RTOs. While an RTO may administer or manage the transmission facilities, there may be instances where a transmission owner continues to physically control or operate the transmission facilities or control center.¹⁴ Unless the RTO has a single control center that is physically operated by the RTO, a transmission provider that is a member of a RTO may still have physical control over the transmission assets and, importantly, direct access to transmission information. Participation in an RTO does not necessarily eliminate or restrict the ability of an electric transmission

provider from sharing information with its affiliates preferentially or operating facilities for the benefit of its affiliates. Therefore, the standards of conduct should govern the relationship between the transmission provider/owner, its merchant function and/or energy affiliates. The proposed regulations contain a provision whereby if a transmission provider participates in a Commission approved RTO and does not manage or control transmission facilities, it may request an exemption from the standards of conduct.

In addition, the proposed standards of conduct would govern the relationships between the transmission providers and all of their energy affiliates, not just those engaged in marketing or sales functions.

In Order No. 889, the Commission stated that utilities' purchases of power for their retail native load customers were not sales for resale. Therefore, those employees that engage in sales or purchases solely on behalf of bundled retail native load were not treated as wholesale merchant function employees.¹⁵ Under the current standards of conduct, employees engaged solely in a bundled sales function for retail native load can also perform transmission functions, and they may have access to all transmission, non-affiliated customer and market information available to the transmission provider.

In this NOPR, the Commission is proposing to apply the standards of conduct to require a separation of the transmission function from all sales functions, including bundled retail sales and a restriction on preferential access to transmission information for the bundled retail sales function. All merchant function employees would need to be separated from transmission function employees, whether they are engaged in bundled retail sales or wholesale sales. Therefore, the transmission providers employees engaged in bundled sales functions for retail native load will be treated the same as wholesale merchant function employees. In addition, the transmission providers would have to implement measures to restrict the retail native load sales employees' preferential access to transmission information. In the final rule, the Commission may determine that this separation is not required. Parties are strongly urged to provide factual evidence on the costs and benefits of this proposal in their

comments. State commissions are also strongly urged to provide their views as well.

The Commission is not proposing to assert jurisdiction over the underlying transactions in a bundled retail sale, merely requiring the employees engaged in sales functions to operate independently of the transmission function and to restrict access to the transmission provider's transmission information or confidential transmission customer information. This would ensure that all transmission customers, affiliated or non-affiliated, bundled or unbundled, will have equal access to the transmission providers' transmission information.

This Notice of Proposed Rulemaking (NOPR) does not propose any changes to the record keeping requirements of § 250.16 of the Commission's regulations, 18 CFR 250.16 (2001), or the posting requirements of § 37.4(b)(6) of the Commission's regulations, 18 CFR 37.4(b)(6) (2001), other than to make technical and conforming revisions, as needed.

A. General Principles—Proposed § 358.2

The central principles of the regulations are that: (1) The transmission providers' employees engaged in transmission system operations must function independently from the transmission providers' sales or marketing employees and from any employees of their energy affiliates; and (2) the transmission providers must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and cannot operate their transmission systems to benefit preferentially an energy affiliate. This proposed section would set forth these general rules.

B. Definitions—Proposed § 358.3

Proposed § 358.3 combines and revises the definitions that were previously contained in §§ 161.2 and 37.3. The Commission proposes to define a transmission provider as any public utility that owns, operates or controls interstate transmission facilities or any natural gas pipeline company subject to the current standards of conduct. In addition, the Commission is proposing to define an energy affiliate as any entity affiliated with a transmission provider (gas or electric) that engages in or is involved in transmission transactions or manages or controls transmission capacity or buys, sells, trades or administers natural gas or electric energy or engages in financial transactions relating to the sale or transmission of natural gas or electric energy. Under this definition, for

¹³ See note 2.

¹⁴ See Grid Florida, L.L.C., 94 FERC ¶ 61,363 (2001), the Commission permitted GridFlorida to operate a hierarchical control area that exercises operational control by communicating with control centers operated by the existing control area operators that work for the transmission owner. See also, PJM Interconnection, L.L.C. and Allegheny Power, 96 FERC ¶ 61,060 (2001), where the Commission permitted PJM-West's transmission assets to be operated through PJM's central control center, while the physical control of those transmission assets would remain with the transmission owners.

¹⁵ Order No. 889-A at 30,558. See also, American Electric Power Service Corporation, 81 FERC ¶ 61,332 at 62,514 (1997), order on reh'g, 82 FERC ¶ 61,131 (1998); order on reh'g, 83 FERC ¶ 61,357 (1998).

example, a transmission provider would be required to treat affiliated asset managers as energy affiliates.

Currently, the gas standards of conduct exempt producers that sell from their own production, gatherers that sell from their own gathering facilities and local distribution companies (LDCs) that make on-system sales. 18 CFR 161.2 (2001). Under the proposed definition of energy affiliates, transmission providers would be required to apply the standards of conduct to their relationships with their affiliated producers, gatherers and LDCs.

C. Independent Functioning—Proposed § 358.4

The principle underlying proposed § 358.4 is that when the employees engaged in transmission services function independently, there are significantly fewer opportunities to give preferential treatment to affiliates engaged or involved in commodity transactions or other business activities that compete with non-affiliated customers of the transmission providers.

1. Separation of Functions

Proposed § 358.4(a), which combines the separation of functions requirements of current §§ 161.3(g) and 37.4(a)(1) and (2), ensures that the transmission function employees of the transmission provider function independently of the transmission provider's sales and marketing employees and employees of the energy affiliates. Like the separation of functions requirement in current § 37.4(a)(1) and (2), employees engaged in transmission functions would be required to function independently; but, in the event of emergencies affecting system reliability, may take whatever steps are necessary to keep the transmission systems in operation, including, if needed, using affiliates' employees.

Currently, under § 37.4(a)(2), if the transmission function of an electric transmission provider utilizes the services of a wholesale merchant function employee during an emergency circumstance affecting system reliability, the electric transmission provider posts each such event on its OASIS and reports it to the Commission in an "EY" docket within 24 hours of a deviation. The Commission proposes to hold gas transmission providers to the same requirement under proposed § 358.4(a). Annually, since 1998, the Commission has received between eight and 18 reports of emergency circumstances necessitating deviations from the separation of functions requirement. As the Commission stated in Order No. 889, if a pattern of

activities indicates that "emergencies" are not authentic, the Commission will take strong action against the offending transmission provider.

2. Identification of Affiliates on Internet

Proposed § 358.4(b) requires all transmission providers to post information with respect to their marketing and sales employees and energy affiliates on their OASIS or Internet websites, as applicable. Gas pipelines already post this information with respect to their marketing affiliates under § 161.3(l). Although the current regulations do not require electric transmission providers to post the names and addresses of their marketing affiliates on the OASIS, the Commission did require the posting of organizational charts and job descriptions when it reviewed the electric transmission providers' implementation of the standards of conduct.¹⁶

Commission staff recently reviewed pipelines' Internet websites and other public sources and learned that it is extremely difficult to obtain up-to-date information about the relationship of pipelines and their other affiliated shippers. Given the frequent mergers and acquisitions in the energy industry, and the impact on the market, it is important to make this organizational information available to all potential customers and to the Commission via posting on the OASIS or Internet website.

The Commission's current policy with respect to announced mergers is to treat the potential merger partners as affiliates.¹⁷ The Commission requests comments whether these rules should require the posting of the potential merger partners on the OASIS or Internet Website.

3. Transfer of Employees

The transfer of employees between transmission and marketing or sales functions, or between a transmission provider and its affiliates, presents opportunities for the inappropriate sharing of information in circumvention of the standards of conduct. While a one-time transfer of an employee from the transmission provider to the marketing or sales function or energy affiliate (or vice versa) may not present the potential for circumvention,

¹⁶ American Electric Power Service Corporation, 81 FERC ¶61,332 (1997), order on reh'g, 82 FERC ¶61,131 (1998); order on reh'g, 83 FERC ¶61,357 (1998).

¹⁷ Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 FR 70,983 (Nov. 28, 2000), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶31,111 at 31,887 (Nov. 15, 2000), reh'g denied, Order No. 642-A, 94 FERC ¶61,289 (Mar. 15, 2001).

transferring an employee multiple times (*i.e.*, cycling) is inconsistent with the independent functioning requirement. In *KN Interstate Gas Transmission Company* (KN), the Commission prohibited the cycling of employees and held that transferred employees may not use, in their new jobs, transportation information that is not publicly available.¹⁸

Proposed § 358.4(c) parallels the current requirements of § 37.4(b)(2) of the electric standards of conduct, which permits transmission provider employees, marketing and sales employees and energy affiliate employees to transfer between such functions, as long as such transfers are not used as a means to circumvent the standards of conduct. Notices of employee transfers would be posted on the OASIS or Internet website. The cycling of employees between the transmission provider, the marketing or sales unit or the energy affiliates facilitates the sharing of preferential information between these functions. The posting of transfer information provides a technique to detect possible improper cycling of employees.¹⁹ This enables the Commission and the public to monitor all transfers and to ensure that employees are not cycling between functions. The Commission requests comments on whether there is a need for clearer standards for transfers of employees among the transmission function, marketing or sales function and energy affiliates, and specifically, what standards the Commission should adopt.

4. Books and Records

Proposed § 358.4(d) parallels current §§ 161.3(j) and 37.4(b)(6). Under this requirement transmission providers must keep separate books and records from those of their energy affiliates. This ensures that the companies operate independently. It also helps to ensure that the regulated companies are not used to subsidize or support the unregulated companies.

5. Written Procedures

Proposed § 358.4(e) replaces the requirements of §§ 161.3(i) and 37.4(c). Under proposed § 358.4(e), transmission

¹⁸ 80 FERC ¶61,212 (1997). For example, in KN, the Commission suggested that a transferred employee could be restricted to assignments or responsibilities that would not use information obtained from non-affiliated or potential non-affiliated shippers or by showing that the transportation information has lost its commercial value, *i.e.*, a "cooling off" period before or after the transfer.

¹⁹ See *e.g.*, *Kinder Morgan Interstate Gas Transmission, L.L.C., et al.*, 90 FERC ¶61,310 (2000).

providers must file with the Commission written procedures implementing the standards of conduct. Merely restating the regulations or incorporating them by reference will not show acceptable compliance. The transmission providers must explain the measures they used to implement the standards of conduct, e.g., how transmission information and confidential customer information is kept secure, whether the standards of conduct have been distributed to employees, whether employees have been offered training on the standards of conduct, and whether employees are required to read and sign acknowledgment forms. The Commission solicits comments on whether it is sufficient to file this information with the Commission or whether it should also be posted on the OASIS and Internet websites. Also, the Commission requests comment on whether this requirement is a useful technique for ensuring compliance or whether the Commission should adopt other measures.

D. Non-Discriminatory Requirements—Proposed § 358.5

The principle underlying these requirements is that the transmission provider is prohibited from giving the employees of its affiliates or the employees engaged in marketing and sales any undue preferential treatment. The proposed standards specify the ways in which a transmission provider must ensure equal treatment and equal access to information.

1. Information Access

Proposed § 358.5(a), which combines §§ 161.3(f) and 37.4(b)(3), limits the marketing and sales employees and the energy affiliates' employees' access to transmission information. Proposed §§ 358.5(a) and (b) are designed to prevent transmission providers from giving their marketing and sales employees and the employees of their energy affiliates undue preferences over their unaffiliated customers through the exchange of "insider" information. As with the current requirements, the proposal would require transmission providers to implement security measures to restrict access to transmission information.

2. Prohibited Disclosure

Proposed § 358.5(b) combines the requirements of current §§ 161.3(e) and 37.4(b)(4). Transmission providers would be prohibited from disclosing transmission information about transmission system operations or information acquired from non-affiliated

customers to their marketing and sales employees and the energy affiliates' employees through non-public communications. During the March 15, 2001 Staff Affiliate Conference on gas pipeline issues, several industry participants expressed concerns that pipelines may be sharing confidential information with their non-marketing affiliates that could improve the affiliates' ability to secure deals or compete against non-affiliates. For example participants suggested that, a non-marketing affiliate could have advance knowledge of an upcoming open season, which would give it the opportunity to line-up its transactions on an affiliated interconnecting pipeline. No specific examples of this were presented; however, by applying the standards of conduct to all energy affiliates, a transmission provider would not be permitted to share this type of information with its energy affiliates.

3. Implementing Tariffs

Proposed § 358.5(c) combines §§ 161.3(a), (b), (c), (d) and (k) and § 37.4(b)(5), under which transmission providers are required to treat all customers in a fair and impartial manner. For example, transmission providers must apply tariff provisions in a manner that treats all transmission customers in a non-discriminatory manner. Transmission providers would be prohibited from giving their marketing and sales employees and energy affiliates' employees preferential treatment, such as more flexible service.

4. Discounts

Proposed § 358.5(d) combines the requirements of §§ 161.3(h) and 37.6(c)(3). Proposed § 358.5(d) is consistent with the way electric transmission providers currently treat discounts—any offer of a discount for any transmission service made by the transmission provider must be announced to all potential customers solely by posting on the OASIS. These proposed rules do not change § 37.6(c)(3) of the OASIS requirements.

Proposed § 358.5(d) would change current discounting requirements for natural gas pipelines, however. Currently, § 161.3(h)(1), states that if a pipeline offers a discount to its marketing affiliate, the pipeline must make a comparable discount contemporaneously available to all similarly situated non-affiliated shippers. However, under current § 161.3(h)(2), the pipeline is required to post relevant information (name of affiliate, maximum rate, discounted rate, delivery points, quantity of gas and conditions) on its Internet website

within 24 hours of the time at which gas first flows under a discounted transaction. With the increased market transparency and liquidity, the Commission proposes to adopt the electric standard for interstate natural gas pipelines, i.e., that transmission providers announce all discounts (not only discounts to affiliates) to all potential customers via the OASIS or Internet website at the time of the offers. This is a simpler, quicker way of communicating discount information to all potential customers and ensures that all potential customers have contemporaneous equal access to current pricing information. The Commission does not propose to change the current policy permitting natural gas transmission providers to offer selective discounts.

The Commission also solicits comments on whether it would be necessary to continue posting discount information for gas transactions under proposed § 358.5(d) when rate information is required to be posted under §§ 284.13(b)(1) and (2) of the Commission's regulations.²⁰

III. Conforming Changes

The Commission proposes to make conforming changes to the regulations to delete references to Parts 37 and 161, as necessary, and add references to Part 358.

IV. Additional Policy Changes

In addition to proposing new standards of conduct, the Commission is soliciting comments on additional measures that may be necessary to limit transmission providers' abilities to grant their affiliates undue preferences.

In the past, gas industry participants have expressed concern that pipelines' marketing affiliates were able to lock up capacity through discounted bids. At the March 15, 2001 Affiliate Conference, some participants expressed concern that the pipelines' marketing affiliates might outbid other potential shippers for pipeline capacity by paying an above-market price (where the market price is less than the maximum tariff rate) for available pipeline capacity. The Commission seeks comments on whether such bidding activities are taking place, and if so, how such bidding activity by marketing affiliates affects the gas market.

²⁰ Under § 284.13(b)(1) and (2), 18 CFR 284.13(b)(1) and (2) (2001), a pipeline must post on its Internet website, no later than the time of the first nomination under a transaction, firm contract information and interruptible agreement information, including the charged rate, the quantity of gas scheduled, receipt and delivery points, the identity of the shipper, and whether the shipper is affiliated.

At the March 15, 2001 Affiliate Conference, several industry participants suggested the following measures for the Commission's consideration: (1) Limiting the amount of capacity (by volume or by percentage of capacity) an affiliate can hold on a transmission provider; (2) revising capacity allocation policies to minimize an affiliate's ability to exercise market power by allocating firm capacity to as many shippers as possible; (3) revising the policies for bumping interruptible transportation; (4) prohibiting transmission providers from entering into profit-sharing agreements with affiliates and non-affiliates; (5) limiting pipelines' ability to sell call options on capacity to their affiliates; (6) requiring the pipelines to disgorge any revenues paid by a marketing affiliate in excess of the pipeline's opportunity costs; (7) requiring the geographic (physical) separation of transmission functions and affiliates; or (8) prohibiting affiliated power generators from connecting with affiliated pipelines. The Commission is seeking comments whether any of these policies are necessary or appropriate for the Commission to adopt.

To date, few formal complaints have been filed against pipelines with respect to their relationships with their marketing affiliates and many of the various options or proposals discussed during the March 15, 2001 Affiliate Conference referenced anecdotal, rather than specific, examples of affiliate abuse. To the extent possible, commenters should provide evidence that would support any measures proposed in their comments. In addition, comments should address the economic consequences of any policies supported by the commenter, e.g., the impact on the competitive market, whether there would be stranded costs to take into account, whether there could be a rate impact on captive customers, and whether the benefits associated with the proposed measures outweigh the costs.

When promulgating Order No. 497, the Commission considered imposing structural remedies to limit anti-competitive behavior, such as divestiture (spin off the affiliate) or divorcement (prohibiting the affiliate from doing business on the affiliated pipeline). Although the Commission rejected structural remedies because they could reduce the choices available to buyers and sellers of gas or for moving gas in the market place, the Commission can always use structural remedies when it finds that a pipeline violates the standards of conduct. Here, the Commission is seeking comments on

whether behavioral remedies for transmission providers, such as the standards of conduct or those mentioned above, are sufficient to limit anti-competitive behavior, or whether the Commission should consider imposing structural remedies. Comments concerning proposed structural remedies should discuss the impact on the competitive market and explain the economic consequences of the proposed remedies.

The standards of conduct are designed to prevent a regulated company's market power over transmission from being used to benefit other aspects of its energy business, and so focuses on the transmission function. For public utilities, the Commission also imposes codes of conduct for power sales to govern the relationship between an investor-owned public utility and its power marketing affiliates. The purpose of the codes of conduct is to protect captive ratepayers of the investor-owned public utilities.²¹ The codes of conduct have been imposed as conditions to market based rate authority. To date, the codes of conduct have not been codified in the Commission's regulations. The Commission requests comments on whether it should codify these codes of conduct.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act²² requires rulemakings to contain either a description and analysis of the effect that a rule will have on small entities or to certify that the rule will not have a significant economic effect on a substantial number of small entities. Because most transmission providers do not fall within the definition of "small entity,"²³ the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Information Collection Statement

The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.²⁴ The NOPR replaces existing rules under parts 161 and 37 with comparable rules at part 358. Under the current requirements at parts 161 and 37, transmission providers are posting certain information with respect to their marketing affiliates or wholesale merchant functions on their respective OASIS nodes or Internet websites. The

NOPR also requires the transmission providers to post the same information on their OASIS or Internet websites with respect to the transmission providers' energy affiliates. This information helps potential customers and the Commission determine whether or not there has been discrimination in pipeline/affiliate/nonaffiliated transactions.

The Commission is submitting notification of these posting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d) (1994). Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondent's burden, including the use of automated information techniques.

Estimated Annual Burden:

Data collection			
No. respondents	No. of responses	Hours per response	Total annual hours
257	1	65	16,705

Total Annual Hours for Collection: (Reporting + Recordkeeping, (if appropriate)) = 16,705.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following: total hours divided by 2,080 (total work hours in a year) times \$117,041 = \$939,985.53.

Annual Capital/Startup costs	0
Annualized Costs (Operations & Maintenance)	\$939,985
Total Annualized Costs	\$939,985

OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC-592 and 717.

Action: Proposed Collection.

OMB Control No: 1902-0157 and 1902-173.

Respondents: Business or other for profit.

Frequency of Responses: On occasion.

Necessity of the Information: The information is necessary to ensure that all regulated transmission providers treat all transmission customers in a

²¹ 68 FERC at 62,062-63.

²² 5 U.S.C. 601-612 (1994).

²³ See 5 U.S.C. 601(3) (1994).

²⁴ 5 CFR 1320.13 (2001).

non-discriminatory basis. By requiring the posting of information regarding transmission, all non-affiliated customers have the ability to acquire information simultaneously with affiliated customers in a pro-competitive environment. The information also permits the market participants and the Commission to monitor the transmission market in a timely and efficient manner.

Internal Review: The Commission has reviewed the requirements pertaining to natural gas pipelines and transmitting electric utilities and determined the proposed revisions are necessary because of the evolving energy market. The Commission proposes to consolidate the standards of conduct to govern the relationships between regulated transmission providers and their affiliates that engage in or are involved in transmission transactions or manage or control transmission capacity. Although the current standards of conduct limit a transmission provider's ability to make or grant undue preferences to the wholesale merchant function of their businesses (in the electric area) or to their marketing affiliates, they do not cover the transmission providers' other non-marketing affiliates.

These requirements conform to the Commission's plan for efficient information collection, communication, and management within the gas and electric industries. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202)208-1415, fax: (202)208-2425, e-mail: Michael.Miller@FERC.FED.US).

Comments on the requirements of the subject proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).²⁷

VII. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse

effect on the human environment.²⁵ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.²⁶ The action proposed here falls within the categorical exclusions provided in the Commission's regulations.²⁷ Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VIII. Public Comment Procedure

The Commission invites all interested persons to submit written comments on this proposal. An original and 16 copies of such comments should be received by the Commission before 5 p.m. November 19, 2001. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. RM01-10-000.

In addition to filing paper copies, the Commission encourages the filing of comments either on 3 1/2 inch computer diskette or via Internet e-mail. Comments may be filed in the following formats: WordPerfect 8.0 or lower version, Microsoft Word 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM01-10-000; the name of the filing entity; the software and version used to create the file (WP, MS Word or ASCII); and the name and telephone number of the contact person.

For Internet E-mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM01-10-000. In the body of the E-mail message, include the name of the filing entity; the software and version used to create the file (WP, MS Word or ASCII), and the name and telephone number of the contact person. Attach the comment to the E-mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at (202) 501-8145, e-mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any

discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS links. User assistance is available at (202) 208-2222 or by e-mail to rims.master@ferc.fed.us.

IX. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Commission's Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426. Additionally, comments may be viewed and printed remotely via the Internet through FERC's Home page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission's Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's homepage (<http://www.ferc.gov>) using the CIPS link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and Word Perfect 6.1. User assistance is available at (202) 208-0874 or e-mail to cips.master@ferc.fed.us.

The document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via the Internet through FERC's homepage using the RIMS link or Energy Information Online icon. User assistance is available at (202) 208-2222, or by e-mail to rims.master@ferc.fed.us.

Finally the complete text on diskette in Word Perfect format may be purchased from the Commission's copy contractor, RVJ International, Inc., which is located in the Public Reference

²⁵ Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. ¶ 30,783 (1987).

²⁶ 18 CFR 380.4 (2001).

²⁷ 18 CFR 380.4(a)(2)(ii) and 380.4(a)(5) (2001).

Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

List of Subjects

18 CFR Part 37

Conflict of interests, Electric power plants, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 358

Conflict of interest, Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,
Secretary.

In consideration of the foregoing, the Commission proposes to amend Title 18 of the Code of Federal Regulations, as follows:

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS

1. The authority citation for part 37 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In part 37, the heading is revised to read as set forth above.

§ 37.4 [Removed and reserved]

3. Section 37.4 is removed and reserved.

§ 37.6 [Amended]

4. In § 37.6(g)(3), the word “§ 37.4(b)(2)” is removed and the word “§ 358.4(c)” is added in its place and in § 37.6(g)(4), the word “§ 37.4(b)(5)(iii)” is removed and the word “§ 358.5(c)(4)” is added in its place.

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES [REMOVED]

5. Part 161 is removed in its entirety.

PART 250—FORMS

6. The authority citation for part 250 continues to read as follows:

Authority: 16 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

7. In § 250.16(a), the word “§ 161.2” is removed and the word “§ 358.3” is added in its place and in § 250.16(e), the word “§ 161.3” is removed and the words “§§ 358.4 and 358.5” are added in its place.

8. In § 284.13(a), the word “Part 161” is removed and the word “part 358” is added in its place.

9. In § 284.286(c), the words “§ 161.3(a), (b), (d), and (k) of this chapter and comply with § 161.3((c), (e), (f), (g), (h), and (l) of this chapter” are removed and the word “part 358” is added in their place.

10. Subchapter S, part 358, is added to read as follows:

SUBCHAPTER S—STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS

PART 358—STANDARDS OF CONDUCT

Sec.

- 358.1 Applicability.
- 358.2 General principles.
- 358.3 Definitions.
- 358.4 Independent functioning.
- 358.5 Non-discrimination requirements.

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce, except that this part does not apply to an electric transmission provider that is a Commission-approved Regional Transmission Organization (RTO). If an electric transmission owner participates in a Commission-approved RTO and does not operate or control its transmission facilities, it may request an exemption from this part.

§ 358.2 General principles.

(a) A transmission provider's employees engaged in transmission system operations must function independently from the transmission provider's marketing and sales employees, and from any employees of its energy affiliates.

(b) A transmission providers must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and must not operate its transmission system to preferentially benefit an energy affiliate.

§ 358.3 Definitions.

(a) *Transmission provider* means:

(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce or (2) Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(b) *Affiliate* means:

(1) Another person which controls, is controlled by or is under common control with, such person, and

(2) For any exempt wholesale generator, as defined under section 32(a) of the Public Utility Holding Company Act of 1935, as amended, the same as provided in section 214 of the Federal Power Act.

(c) *Control* (including the terms “controlling,” “controlled by,” and “under common control with”) as used in this part and § 250.16 of this chapter, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

(d) *Energy Affiliate* means an affiliate of a transmission provider that:

- (1) Engages in or is involved in transmission transactions; or
- (2) Manages or controls transmission capacity of a transmission provider; or
- (3) Buys, sells, trades or administers natural gas or electric energy; or
- (4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy.

(e) *Marketing, sales or brokering* means a sale for resale of natural gas or electric energy in interstate commerce. Sales and marketing employee or unit includes:

(1) Any pipeline's sales operating unit, to the extent provided in § 284.286 of this chapter, and

(2) An electric transmission provider's sales unit, including those employees that engage in wholesale merchant sales or bundled retail sales.

(f) *Transmission* includes storage, exchange, backhaul, displacement, network or point-to-point service, reliability service, ancillary services or other methods of transportation or the interconnection with jurisdictional transmission.

(g) *Transmission Customer* means any eligible customer, shipper or designated agent that can or does execute a transmission service agreement or can or does receive transmission service, including all persons who have pending

requests for transmission service or for information regarding transmission.

(h) *Reseller* means any transmission customer who offers to sell transmission capacity it has purchased.

(i) *Open Access Same-time Information System* or *OASIS* refers to the Internet location where a public utility posts the information, by electronic means, required by part 37 of this chapter.

(j) *Internet website* refers to the Internet location where a natural gas pipeline posts the information, by electronic means, required by §§ 284.12 and 284.13 of this chapter.

§ 358.4 Independent functioning.

(a) *Separation of functions.* (1) Except in emergency circumstances affecting system reliability, the transmission function employees of the transmission provider must function independently of the transmission provider's marketing or sales employees, and its energy affiliates' employees.

(2) Notwithstanding any other provisions in this section, in emergency circumstances affecting system reliability, transmission providers may take whatever steps are necessary to keep the system in operation. Transmission providers must report to the Commission and post on the OASIS or Internet website, as applicable, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.

(3) The transmission provider is prohibited from permitting its sales and marketing employees or employees of its energy affiliates from:

- (i) Conducting transmission system operations or reliability functions; and
- (ii) Having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers.

(b) *Identifying affiliates on the public Internet.* (1) A transmission provider must post the names and addresses of its sales and marketing units and energy affiliates on its OASIS or Internet website.

(2) A transmission provider must post on its OASIS or Internet website, as applicable, a complete list of the facilities shared by the transmission provider and its marketing or sales units or any energy affiliates, including the types of facilities shared and their addresses.

(3) A transmission provider must post comprehensive organizational charts showing:

(i) The organizational structure of the parent corporation with the relative

position in the corporate structure of the transmission provider, marketing and sales units and any energy affiliates;

(ii) For the transmission provider, the business units, job titles and descriptions, and chain of command for all positions, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, the employee's duties, whether the employee is involved in transmission or sales, and the name of the supervisory employees who manage non-clerical employees involved in transmission or sales.

(iii) For all employees who are engaged in transmission functions for the transmission provider and marketing or sales functions or who are engaged in transmission functions for the transmission provider and are employed by any of the energy affiliates, the transmission provider must post the name of the business unit within the marketing or sales unit or the energy affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or energy affiliate, and the employee's position within the chain of command of the marketing or sales unit or energy affiliate.

(iv) The transmission provider must update the information on its OASIS or Internet website, as applicable, required by §§ 358.4(1), (2) and (3) within three business days of any change, posting the date on which the information was updated.

(v) All OASIS or Internet website postings required by part 358 must comply, as applicable, with the requirements of § 37.3 or §§ 284.12(a) and (c)(3)(v) of this chapter.

(c) *Transfers.* Employees of the transmission provider, marketing or sales unit or energy affiliates are not precluded from transferring among such functions as long as such transfer is not used as a means to circumvent the standards of conduct. Notices of any employee transfer must be posted on the OASIS or Internet website, as applicable. The information to be posted must include: the name of the transferring employee, the respective titles held while performing each function (i.e., on behalf of the Transmission Provider, Marketing Function or Energy Affiliate), and the effective date of the transfer. The information posted under this section must remain on the OASIS or Internet website, as applicable, for 90 days.

(d) *Books and records.* A transmission provider must maintain its books of account and records (as prescribed

under parts 101, 125, 201 and 225 of this chapter) separately from those of its energy affiliates and these must be available for Commission inspections.

(e) *Written procedures.* The transmission provider must file with the Commission and post on the OASIS or Internet website, current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to determine that the transmission provider is in compliance with the requirements of this section.

§ 358.5 Non-discrimination requirements.

(a) *Information access.* (1) The transmission provider must ensure that any employee of the transmission provider engaged in marketing or sales or any employee of any energy affiliate may only have access to that information available to the transmission provider's transmission customers (i.e., the information posted on the OASIS or Internet website, as applicable), and must not have access to any information about the transmission provider's transmission system that is not available to all users of an OASIS or Internet website, as applicable.

(2) The transmission provider must ensure that any employee of the transmission provider engaged in marketing or sales or any employee of any energy affiliate is prohibited from obtaining information about the transmission provider's transmission system (including, but not limited to, information about available transmission capability, price, curtailments, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information) through access to information not posted on the OASIS or Internet website or that is not otherwise also available to the general public without restriction.

(b) *Prohibited disclosure.* (1) An employee of the transmission provider may not disclose to its marketing or sales employees, or to employees of the transmission provider's energy affiliates any information concerning the transmission system of the transmission provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information) through non-public communications conducted off the OASIS or Internet website, through access to information not posted on the OASIS or Internet Website that is not

contemporaneously available to the public, or through information on the OASIS or Internet website that is not at the same time publicly available.

(2) A transmission provider may not share any information, acquired from nonaffiliated transmission customers or potential nonaffiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS or Internet website, with its marketing or sales employees or energy affiliate employees, except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary services.

(3) If an employee of the transmission provider discloses information in a manner contrary to the requirements § 358.5(b)(1) and (2), the transmission provider must immediately post such information on the OASIS or Internet website.

(c) *Implementing tariffs.* (1) A transmission provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if these tariff provisions do not permit the use of discretion.

(2) A transmission provider must apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a non-discriminatory manner, if these tariff provisions permit the use of discretion.

(3) A transmission provider must process all similar requests for transmission in the same manner and within the same period of time.

(4) The transmission provider must maintain a written log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS or Internet website within 24-hours of when a transmission provider exercises its discretion under any terms of the tariff.

(5) The transmission provider may not, through its tariffs or otherwise, give preference to its own marketing or sales function or to any energy affiliate, over any other wholesale customer in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).

(d) *Discounts.* Any offer of a discount for any transmission service made by the transmission provider must be posted on the OASIS or Internet website

contemporaneously with the offer. The posting must include: The name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction, the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of power or gas scheduled to be moved; the delivery points under the transaction; and any conditions or requirements applicable to the discount. The posting must remain on the OASIS or Internet website for 60 days from the date of posting.

[FR Doc. 01-24667 Filed 10-4-01; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 589

[Docket No. 01N-0423]

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing in Kansas City, MO, to solicit information and views on its present animal feeding regulation. The purpose of the rule is to help prevent the establishment and amplification of the agent(s) of bovine spongiform encephalopathy (BSE) in the U.S. cattle herd through feed and thereby help minimize any risks from such agent(s) to animal or human health. FDA recognizes that much new information has emerged on BSE and new variant Creutzfeldt-Jakob Disease (vCJD) since the rule went into effect in 1997. FDA is therefore requesting information and views from individuals and organizations on the present rule and whether changes in the rule or other additional measures are necessary. The agency is particularly interested in soliciting comments and views from individuals, industry, consumer groups, health professionals, and researchers with expertise in BSE and related animal and human diseases.

DATES: The hearing will be held on October 30, 2001, from 9 a.m. to 5 p.m. central time and will be open to the public throughout its entirety. The hearing will be adjourned from 12 noon

to 1 p.m. for lunch. FDA will reserve the hour from 4 p.m. to 5 p.m. for those who have not registered to present orally at the meeting to make oral presentations to the panel. Those individuals or organizations that wish to register to present orally at the hearing must register by 4:30 p.m. eastern time on October 23, 2001. Send registration information to the contact person. Written comments regarding the matters before this panel are welcome at anytime; however, the official record of the hearing will remain open to receive written comments until November 21, 2001.

ADDRESSES: The public hearing will be held at the Westin Crowne Center Hotel, One Pershing Rd., Kansas City, MO. Those wishing to present orally at the hearing must submit a written notice of participation to Linda Grassie at the address or fax number listed in **FOR FURTHER INFORMATION CONTACT** section. To submit electronic comments go to <http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm>.

Individuals and organizations wishing to submit written comments on these issues to the panel, but who do not wish to present orally to the panel, should submit their written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Written comments are to be identified with Docket No. 01N-0423.

Information specified in this notice can be received by calling 301-594-5000 or sending a self-addressed stamped envelope with your request to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Linda Grassie, Center for Veterinary Medicine (HFV-12), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-3796, FAX 301-827-4065, e-mail lgrassie@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 5, 1997 (62 FR 30936), FDA issued a final rule amending its final regulations to provide that animal protein derived from mammalian tissues for use in ruminant feed is a food additive subject to certain provisions in the Federal Food, Drug, and Cosmetic Act. The final rule established at § 589.2000 (21 CFR 589.2000) a flexible system of controls, including a number of exemptions, designed to ensure that ruminant feed does not contain most mammalian tissue proteins and to encourage innovation in such controls. FDA issued this regulation to protect animal and

human health in the United States. The final rule was intended to help prevent the establishment and amplification of BSE in the U.S. cattle herd through feed, and thereby help minimize any risk from the agent(s) of BSE to animals or humans health.

This rule has now been in effect for 4 years. Federal, State, and private sector entities have conducted an intensive campaign to educate livestock producers and all sectors of the animal feed industry on the purpose of the rule and the requirements for compliance with the rule. Since 1997, FDA and State feed inspectors have conducted over 10,000 inspections of cattle producers and firms involved in the manufacture of animal feeds. The inspectors found approximately 78 percent of these firms to be in compliance with this rule. Upon re-inspection, inspectors found approximately 90 percent of the firms to be in compliance with the rule. In addition, there have been incidents in which feed containing prohibited materials has been fed to cattle. To date, there is no evidence that this feed contained prohibited proteins that were infected with the agent(s) of BSE. All known instances of feeding violations involved animal protein from countries free of BSE.

To date, there has been no evidence of BSE or vCJD in the United States. Nonetheless, since the promulgation of this rule, BSE has spread and is now found in most countries of western and central Europe and, pending final confirmation, Japan. New efforts this year to contain the spread of the epidemic in Europe have included, among other policies, a ban on feeding most animal protein to farmed animals.

II. Scope of the Hearing

There are many evolving, complex scientific and public health issues involved in the effort to prevent the establishment and amplification of the agent(s) of BSE in the U.S. cattle herd and to reduce the risk to American public health from the agent(s) of BSE. In light of these issues, FDA is soliciting broad public participation and comment on issues regarding whether new measures are necessary in addition to FDA's present animal feeding rule at § 589.2000 and regarding the compliance with that rule to date. Because of the spread of BSE beyond the United Kingdom, and because of the compliance experience to date with the 1997 rule, FDA believes it would be prudent to solicit information and views on the present rule and if there are ways in which this rule and its enforcement might be further improved to meet its

original objectives or any new objective(s) that may now be appropriate to consider.

Since 1997, FDA has received numerous unsolicited suggestions from many individuals and groups regarding this rule. These have ranged from making no changes to the rule to completely banning the use of all animal proteins in the feeding of all animals. In addition, there have been many suggestions that would fall between these two positions.

The agency encourages individuals, industry, consumer groups, health professionals, and researchers with particular expertise in this area, as well as other interested persons, to respond to this notice. The agency strongly encourages persons who cannot attend the hearing to send information and views relevant to the topics and questions listed below in this document to the Dockets Management Branch (address above). Comments should be identified with Docket No. 01N-0423.

FDA is soliciting information and comments on all aspects of the present feeding rule at § 589.2000 and specifically requests comments on the following questions. For each question, FDA is requesting information and comments on the impact on public health and on both animal feed and human food safety, on any increased business costs that might result from such changes, and any suggestions on ways to minimize any potential increased costs or any relevant environmental concerns associated with such changes. Individuals and organizations may address as many of the following questions as they wish. It is not expected that all participants will address all questions.

1. What additional enforcement activities, if any, regarding the present rule are needed to provide adequate public health controls? Are there other suggestions for ways to improve compliance with the rule?

2. Is the present rule at § 589.2000 adequate to meet its intended objectives? If not, what are its inadequacies? Are there additional objectives that this rule should now address? If so, what are these new objectives?

3. Should the present FDA ban on the use of certain mammalian proteins in ruminant feed be broadened? If so, what should the new parameters of use be? Should the rule be broadened beyond ruminant feed? Beyond mammalian protein?

4. Should FDA require dedicated facilities for the production of animal feed containing mammalian protein to decrease as much as possible the

possibility of comingling during production?

5. Should FDA require dedicated transportation of animal feed containing mammalian protein to decrease as much as possible the possibility of comingling during transport?

6. In order to improve production practices and increase assurance of compliance with the rule, should FDA require FDA licensing of renderers and other firms/facilities engaged in the production of animal feed containing mammalian protein?

7. Should FDA revoke or change any/all of the current exclusions for certain products allowed in the current rule at § 589.2000(a)(1)?

8. Should FDA add to the list of prohibited material in ruminant feed (i.e., add to the definition of "protein derived from mammalian tissues") poultry litter and other recycled poultry waste products?

9. Should FDA remove the exemption for pet foods from labeling with the precautionary statements?

10. Should FDA extend its present recordkeeping requirements beyond 1 year? If so, how many years?

11. Should FDA change its rule to require labeling of protein-containing feed to specify what type(s) of mammal was used in the production of the protein, e.g. "porcine MBM", "bovine MBM".

12. In order to make the statement clearer, should the required cautionary statement on the label of products that contain protein derived from mammalian tissues and that are intended for use in animal feed be changed to read: "Do not feed to cattle, sheep, goats, bison, elk, or deer."?

13. What new information is available on potential efficient, accurate analytical methods that may be used in detecting mammalian proteins, especially the prohibited mammalian proteins, in feed and what should the sampling parameters of such a program be?

14. Regarding enforcing compliance with the rule, what further authorities, if any, would be desirable in order to enforce the rule adequately (civil monetary penalties?, others?)

15. Regarding helping to increase compliance with the rule, what role, if any, should public or private certification programs play?

16. Regarding the import of feed, what should the restrictions on such import be (country specific? comparison between domestic and foreign controls?)

17. Are there any other additional measures necessary to guard against BSE and vCJD in the United States?

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Commissioner of Food and Drugs or his designee. A panel of government employees with relevant expertise will accompany the presiding officer.

Persons who wish to participate in the part 15 hearing must file a written or facsimile notice of participation with Linda Grassie (address or fax number above) by 4:30 p.m. eastern time on October 23, 2001. To ensure timely handling, the outer envelope should be clearly marked with Docket No. 01N-0423 and the statement "Animal Feed Rule Hearing." Groups should submit two copies. The notice of participation should contain the speaker's name, address, telephone number, fax number, business affiliation, if any, a brief summary of the presentation, and approximate amount of time requested for the presentation.

The agency requests that persons or groups having similar interests consolidate their presentations and present them through a single representative. FDA will allocate the time available for the hearing among the persons who properly file notices of participation. FDA will reserve the hour from 4 p.m. to 5 p.m. for those who have not registered to present orally at the meeting to make oral presentations to the panel.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by mail, telephone, or fax, of the time allotted to the person and the approximate time the person's presentation is scheduled to begin. The hearing schedule will be available at the hearing. After the hearing, the schedule will be placed on file in the Dockets Management Branch (address above) under Docket No. 01N-0423.

In order to facilitate the efficiency of the hearing process, presenters at the hearing should indicate the format in which their presentations will be made so that appropriate visual aids can be made available. Presenters should note that a hardcopy version of their presentations should be submitted to FDA on the day of the hearing for inclusion in the official record of the hearing.

Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. The presiding officer and any panel members may question any

person during or at the conclusion of their presentation. No participant may interrupt the presentation of another participant.

Public hearings under part 15 are subject to FDA's policy and procedures (part 10 (21 CFR part 10, subpart C)) for electronic media coverage of FDA's public administrative proceedings. Under § 10.205, FDA permits persons, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as required in § 15.30(b).

Any disabled persons requiring special accommodations in order to attend the hearing should direct those needs to the contact person listed above.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

IV. Request for Comments

To permit time for all interested persons to submit data, information, or views on this subject, interested persons may submit to the Dockets Management Branch written comments for this hearing at any time; however, the official record of the hearing will remain open to receive written comments until November 21, 2001. Such written comments can be submitted to the Dockets Management Branch (HFA-305), Animal Feed Rule Hearing, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, or FAX written comments to the Dockets Management Branch, Animal Feed Rule Hearing, 301-827-6870. Two copies of any comments are to be submitted, except individuals should submit one copy. Comments are to be identified with Docket No. 01N-0423.

V. Transcripts

Transcripts of the hearing will be available for review at the Dockets Management Branch (address above) approximately 30 days following the hearing and at <http://www.fda.gov>; also orders can be placed with Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857.

Dated: October 1, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01-25108 Filed 10-4-01; 8:45 am]

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DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 100

[FBI 100P]

RIN 1110-AA00

Implementation of Section 109 of the Communications Assistance for Law Enforcement Act: Definitions of "Replaced" and "Significantly Upgraded or Otherwise Undergoes Major Modification"

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Bureau of Investigation (FBI) proposes to make three amendments to the Communications Assistance for Law Enforcement Act (CALEA) Cost Recovery Regulations. First, the FBI proposes to amend regulations by making a minor technical change to harmonize the rule's language with CALEA's statutory language. Second, the FBI proposes to amend regulations by adding a definition and examples for the term "replaced." Third, the FBI proposes to amend regulations by adding a definition and examples for the term "significantly upgraded or otherwise undergoes major modification." This supplemental notice of proposed rulemaking (SNPRM) provides the text and rationale for the minor technical change, the two proposed definitions, and the proposed examples following the definitions. These amendments will clarify the applicability of the CALEA Cost Recovery Regulations and should assist the telecommunications industry in assessing its responsibilities under CALEA.

DATES: Comments must be received on or before December 4, 2001.

ADDRESSES: Comments should be submitted to the Telecommunications Contracts and Audit Unit, Federal Bureau of Investigation, P.O. Box 230040, Chantilly, VA 20153-0450, Attention: CALEA FR Representative.

FOR FURTHER INFORMATION CONTACT: Walter V. Meslar, Unit Chief, Telecommunications Contracts and Audit Unit, Federal Bureau of Investigation, P.O. Box 221286, Chantilly, VA 20153-0450, telephone number (703) 814-4900.

SUPPLEMENTARY INFORMATION:

Supplementary Information Table of Contents

- A. Request for Comments
- B. Background and Purpose
- C. Regulatory History
- D. Amendment to Section 100.11(a)(1)
- E. Definition Development
 - 1. Significantly Upgraded or Otherwise Undergoes Major Modification
 - a. Background
 - b. The SNPRM Proposed Definition
 - c. Example Summaries
 - d. Conclusion
 - 2. Replaced
 - a. Background
 - b. The SNPRM Proposed Definition
 - c. Example Summaries
 - d. Conclusion
- F. Discussion of Comments Received in Response to Notice of Proposed Rulemaking
 - 1. Definition of "Installed or Deployed"
 - 2. Definition of "Replaced"
 - 3. Federal and State Mandates
 - 4. Status of "Significantly Upgraded" Preexistent Equipment
 - 5. Prohibition on the Development and Deployment of Advanced Technologies
 - 6. Public Safety Approach is Inconsistent With CALEA
 - 7. Meaning of "Impedes"
 - 8. Unintended Impediments
 - 9. October 25, 1998, is an Arbitrary Date
 - 10. Availability of CALEA-Complaint Technology
 - 11. Change From Analog to Digital Switching
 - 12. Just Compensation
- G. Regulatory Evaluation
 - 1. Executive Order 12630 (Takings)
 - 2. Executive Order 12866 (Regulatory Planning and Review)
 - 3. Executive Order 12875 (Enhancing the Intergovernmental Partnership)
 - 4. Executive Order 12988 (Civil Justice Reform)
 - 5. Executive Order 13132 (Federalism)
 - 6. Regulatory Flexibility Act
 - 7. Small Business Regulatory Enforcement Fairness Act of 1996
 - 8. Paperwork Reduction Act
 - 9. Unfunded Mandates Reform Act
 - 10. National Technology Transfer and Advancement Act
- H. Further Regulatory Flexibility Analysis
 - 1. Need for, and Objectives of, the Proposed Rules
 - 2. Legal Basis
 - 3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply
 - a. Total Number of Telephone Companies Affected
 - b. Wireline Carriers and Service Providers
 - c. Local Exchange Carriers
 - d. Interexchange Carriers
 - e. Competitive Access Providers
 - f. Operator Service Providers
 - g. Resellers
 - h. Fixed Satellite Transmit/Receive Earth Stations
 - i. Fixed Satellite Small Transmit/Receive Earth Stations
 - j. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems
 - k. Mobile Satellite Earth Stations

- l. Radio Determination Satellite Earth Stations
- m. Space Stations (Geostationary)
- n. Space Stations (Non-Geostationary)
- o. Cellular Licensees
- p. 220 MHz Radio Service—Phase I Licensees
- q. 220 MHz Radio Service—BPhase II Licensees
- r. Private and Common Carrier Paging
- s. Mobile Service Carriers
- t. Broadband Personal Communications Service (PCS)
- u. Narrowband PCS
- v. Rural Radiotelephone Service
- w. Air-Ground Radiotelephone Service
- x. Specialized Mobile Radio (SMR)
- y. Fixed Microwave Services
- z. Offshore Radiotelephone Service
- aa. Wireless Communications Services
- ab. Cable Services or Systems
- 4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements
- 5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered
- 6. Federal Rules that may Duplicate, Overlap, or Conflict With the Proposed Rules

A. Request for Comments

The FBI encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address; identify the regulation identifier number for this rulemaking (1110-AA00, FBI 100P); indicate the specific section of this document to which each comment applies; and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Telecommunications Contracts and Audit Unit at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know when they were received, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of the comments.

B. Background and Purpose

In 1994, Congress passed the Communications Assistance for Law Enforcement Act (CALEA), 47 U.S.C. 1001-1010, to preserve law enforcement's ability to carry out lawfully authorized electronic surveillance without impeding the development of new communications services and technologies. Under the act, telecommunications carriers are required to facilitate the unobtrusive delivery of intercepted communications and reasonably available call-identifying information to law enforcement. 47 U.S.C. 1002. Telecommunications carriers are also required to ensure that their systems are capable of accommodating simultaneously the number of interceptions, pen registers, and trap and trace devices specified in the

government's capacity notices. 47 U.S.C. 1003(b). Conversely, law enforcement is prohibited from dictating system design features and cannot bar the adoption of new features and technologies. 47 U.S.C. 1002(b)(1).

CALEA also contains a number of reimbursement provisions that were designed to ease the transition to full compliance with the assistance capability and capacity requirements. First, to the extent that telecommunications carriers must install additional capacity to meet law enforcement's needs, the act provides that the Attorney General may agree to reimburse a telecommunications carrier for the reasonable costs directly associated with modifications made to attain the capacity requirements. 47 U.S.C. 1003(e). Second, if the Federal Communications Commission (FCC) determines that compliance with the assistance capability requirements is not reasonably achievable with respect to a telecommunications carrier's equipment, facilities, or services installed or deployed after January 1, 1995 (post-equipment), the Attorney General may agree to pay the telecommunications carrier for the additional reasonable costs of making compliance with the assistance capability requirements reasonably achievable. 47 U.S.C. 1008(b). Finally, the Attorney General may agree to pay a telecommunications carrier for all reasonable costs directly associated with making modifications to its equipment, facilities, or services installed or deployed on or before January 1, 1995 (preexistent equipment) necessary to bring such preexistent equipment into compliance with the assistance capability requirements. 47 U.S.C. 1008(a) & (d). This rulemaking proceeding is primarily concerned with the last reimbursement provision.

CALEA entrusts the Attorney General with a number of implementation responsibilities. The Attorney General has delegated many of these implementation responsibilities to the Director of the FBI. 28 CFR 0.85(o). One of these delegated responsibilities was the establishment of regulations necessary to effectuate timely and cost-efficient payment to telecommunications carriers. 47 U.S.C. 1008(e). The Director assigned the task of establishing the CALEA Cost Recovery Regulations to the Telecommunications Contracts and Audit Unit (TCAU) of the Finance Division. On May 10, 1996, TCAU published a Notice of Proposed Rulemaking (NPRM) for the purpose of establishing the CALEA Cost Recovery Regulations.¹ 61 FR 21396. TCAU published its final rule on the CALEA Cost Recovery Regulations on March 20, 1997. 62 FR 13307.

Section 100.11(a) of the CALEA Cost Recovery Regulations states:

Costs that are eligible for reimbursement under section 109(e) CALEA are:

¹ On November 19, 1996, the FBI initiated this separate rulemaking proceeding by publishing an Advanced Notice of Proposed Rulemaking in the *Federal Register*. 61 FR 58799. This rulemaking proceeding was originally limited to defining the term "significant upgrade or major modification." The purpose of using a separate proceeding was to avoid delaying the publication of the final rule regarding the CALEA Cost Recovery Regulations.

(1) All reasonable plant costs directly associated with the modifications performed by carriers in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section 103 of CALEA, until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modifications * * *.

(emphasis added). This provision is based upon CALEA Section 109(d), which places certain limitations on the reimbursement eligibility of preexistent equipment. Section 109(d) states, in part:

If a carrier has requested payment in accordance with [the CALEA Cost Recovery Regulations], and the Attorney General has not agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring any equipment, facility or service deployed on or before January 1, 1995, into compliance with the assistance capability requirements of section 103, such equipment, facility, or service shall be considered in compliance with the assistance capability requirements of section 103 until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modification.

(emphasis added). Essentially, under both the statute and the CALEA Cost Recovery Regulations, preexistent equipment loses its reimbursement eligibility if it is "replaced or significantly upgraded or otherwise undergoes major modification." Under Section 109(d), preexistent equipment also loses its "considered in compliance" status once such equipment is "replaced or significantly upgraded or otherwise undergoes major modification."

The terms "replaced" and "significantly upgraded or otherwise undergoes major modification" appear in only one other location in the act. CALEA precludes enforcement against a telecommunications carrier with preexistent equipment unless the Attorney General has agreed to reimburse the reasonable costs necessary to bring the equipment into compliance with the assistance capability requirements or the preexistent equipment "has been replaced or significantly upgraded or otherwise undergoes major modification." 47 U.S.C. 1007(c)(3).

These terms play a very important role in the determination of reimbursement eligibility. Neither the statute nor the CALEA Cost Recovery Regulations define these important terms. This rulemaking proceeding was initiated to remedy this situation.

C. Regulatory History

The FBI initiated this rulemaking with an Advanced Notice of Proposed Rulemaking (ANPRM), published in the *Federal Register* on November 19, 1996, 61 FR 58799. The ANPRM solicited comments from interested parties on defining the term "significant upgrade or major modification" in the CALEA Cost Recovery Regulations. On April 28, 1998, the FBI published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register*, 63 FR 23231. In the NPRM, the FBI proposed a definition of the term "significant upgrade or major modification" based on the comments it received in the ANPRM. In this SNPRM, the FBI is publishing a new version of the term "significantly upgraded or otherwise undergoes major modification." The FBI has also decided to use this SNPRM to define the term "replaced" and to make a minor technical amendment to Section 110.11(a)(1).

D. Amendment to Section 110.11(a)(1)

The proposed amendment to Section 110.11(a)(1) is very minor and intended to correct a typographical error that appears at the end of the subsection. The word "modifications" appears in two places in the subsection. This proposed amendment substitutes the second appearance of the word "modifications" with the word "modification." The proposed subsection reads as follows:

§ 100.11 Allowable costs.

(a) * * *

(1) All reasonable plant costs directly associated with the modifications performed by carriers in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section 103 of CALEA, until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modification;

(2) * * *

This change is being made so that the term "significantly upgraded or otherwise undergoes major modification" contained in the rule is identical to the language contained in the CALEA statute. See 47 U.S.C. 1007(c)(3)(B) & 1008(d).

E. Definition Development

1. Significantly Upgraded or Otherwise Undergoes Major Modification

The term "significantly upgraded or otherwise undergoes major modification" can be found in the proposed amendment to Section 100.11(a)(1) of the CALEA Cost Recovery Regulations. In the NPRM, the

FBI proposed to define the term "significant upgrade or major modification" by creating a new section in the CALEA Cost Recovery Regulations, 63 FR 23231. Rather than create a new section entitled "significant upgrade or major modification," the FBI now proposes to amend Section 100.10 of the CALEA Cost Recovery Regulations by adding a definition for the term "significantly upgraded or otherwise undergoes major modification" followed by 15 examples of the definition's operation.

The definition proposed in this SNPRM is a substantial departure from the NPRM proposed definition. It was developed after careful analysis of the CALEA statutory language, the NPRM definition, and the comments submitted by the telecommunications industry in response to the ANPRM and the NPRM. The proposed definition was developed with the goal of preserving law enforcement's ability to conduct electronic surveillance without impeding the introduction of new technologies, features, or services. It strikes an appropriate balance between the needs of law enforcement and the needs of the telecommunications industry. Most importantly, it is entirely consistent with the CALEA statutory scheme.

a. Background

Since the SNPRM proposed definition was based, at least in part, upon the NPRM definition of "significant upgrade or major modification," a brief review of that definition's development is appropriate. The FBI began the process of developing the NPRM proposed definition of "significant upgrade or major modification" by considering three different definitional approaches: Accounting, technical, and public safety. The FBI rejected the accounting approach mainly because it triggered a "significant upgrade or major modification" whenever the cost of a modification exceeded a set percentage of the equipment's value, regardless of whether the modification had any detrimental impact on law enforcement's ability to conduct lawfully authorized electronic surveillance. 63 FR 23233. The FBI also considered and rejected a number of technical approaches to defining the term "significant upgrade or major modification." The FBI discovered that while some technical approaches worked well for some types of equipment, facilities, or services, they did not necessarily work well for all types of equipment, facilities, or services. Each technical definition considered by the FBI left ambiguities

and called for constant definition of the terms used. Id. The FBI concluded that the public safety approach to the definition was the most consistent with the statutory intent of CALEA. Under the public safety approach, a key consideration is whether a given modification has created an impediment to lawfully authorized electronic surveillance. 63 FR 23233.

In accordance with the public safety approach, the FBI proposed in the NPRM to define the term "significant upgrade or major modification" as follows:

• 100.22 Definition of "significant upgrade or major modification."

(a) For equipment, facilities or services for which an upgrade or modification has been completed after January 1, 1995 and on or before October 25, 1998, the term "significant upgrade or major modification" means any fundamental or substantial change in the network architecture or any change that fundamentally alters the nature or type of the existing telecommunications equipment, facility or service, that impedes law enforcement's ability to conduct lawfully authorized electronic surveillance, unless such change is mandated by a Federal or State statute;

(b) For equipment, facilities or services for which an upgrade or modification is completed after October 25, 1998, the term "significant upgrade or major modification" means any change, whether through addition or other modification, to any equipment, facility or service that impedes law enforcement's ability to conduct lawfully authorized electronic surveillance, unless such change is mandated by a Federal statute.

63 FR 23230. The comments received by the telecommunications industry in response to this definition were very useful in developing the SNPRM proposed definition. Many of the features contained in the SNPRM proposed definition are the result of the industry comments.

b. The SNPRM Proposed Definition

The FBI's primary goal in developing the proposed definition for the term "significantly upgraded or otherwise undergoes major modification" was to create a self-explanatory definition consistent with CALEA's statutory language. The FBI began this process by reexamining the dictionary definitions of the words "significantly," "upgrade," "major," and "modification."² The adverb "significantly" is defined to mean "in a significant manner." The adjective "significant" is defined as

"having or likely to have influence or effect." The verb "upgrade" means "to raise or improve the grade of." The adjective "major" means "notable or conspicuous in effect or scope." The noun "modification" means "the making of a limited change in something." Thus, according to the dictionary, the concept of "significantly upgraded" would mean "to have improved the grade of [something] in a manner that has or is likely to have influence or effect" and the concept "major modification" means "the making of a limited change in something that is notable or conspicuous in effect or scope." In essence, the terms "significant upgrade" and "major modification" are synonyms that do not need separate definitions.

The next step in the definitional process was to determine what components could be derived from the CALEA statutory language and incorporated into these simple dictionary definitions. The search for these components began with the definitions suggested by the telecommunications industry. Four commenters, Ameritech Corporation, the Personal Communications Industry Association, the United States Telephone Association (USTA),³ and U S WEST, submitted suggested definitions in response to the FBI's NPRM. These four definitions built upon earlier definitions suggested by the industry in response to the ANPRM.

The FBI ultimately concluded that none of the NPRM suggested definitions could be adopted verbatim as the SNPRM proposed definition because each contained a shortcoming that defeated the goal of making the definition self-explanatory. This shortcoming is also found in the NPRM proposed definition which describes the term "significant upgrade or major modification" in terms of "fundamental or substantial changes in network architecture" or changes that "fundamentally alter the nature or type of existing telecommunications equipment, facility, or service." This shortcoming has the serious disadvantage of substituting two undefined phrases ("fundamental or substantial changes" or "fundamentally alter") in place of another ("significantly upgraded"). Although the FBI did not adopt any of the suggested definitions verbatim, it did incorporate key concepts of these definitions into the SNPRM proposed definition. For example, the fourth, fifth, and sixth components discussed

below were all developed from concepts contained in the suggested definitions.

After reexamining the statutory language of CALEA and the NPRM suggested definitions, the FBI determined that there are at least seven components that need to be incorporated into the SNPRM proposed definition of the term "significantly upgraded or otherwise undergoes major modification."⁴ The first component is the determination of what can be "significantly upgraded." According to CALEA, the only item capable of being "significantly upgraded" is preexistent equipment, that is, equipment, facilities, or services that a telecommunications carrier can use to provide its customers or subscribers with the ability to originate, terminate, or direct communications and was installed or deployed within the carrier's network on or before January 1, 1995. See 47 U.S.C. 1002(a), 1007(c)(3), 1008(a) & (d). This explanation of preexistent equipment is included within the SNPRM proposed definition.

The second component is the determination of who is responsible for an improvement that amounts to a "significant upgrade." The statutory language is fairly clear that a "significant upgrade" can only be performed on preexistent equipment that belongs to a telecommunications carrier. See 47 U.S.C. 1007(c)(3) & 1008(d). For the purposes of the proposed definition, the telecommunications carrier bears the ultimate responsibility for an improvement amounting to a "significant upgrade" of its preexistent equipment, regardless of whether the carrier or some other party, for example, a telecommunications equipment manufacturer, actually installed or deployed the improvement in the carrier's network.

The third component is the determination of what sort of action by a telecommunications carrier will amount to a "significant upgrade" of preexistent equipment. The FBI decided to move away from the terminology of "any change" or "any fundamental or substantial change" contained in the NPRM definition and specify the sorts of actions that might amount to a "significant upgrade." The first step toward specificity was determining what aspects of preexistent equipment are most likely to be changed. The FBI concluded that these aspects are the capabilities, features, or services of the

² All definitions in this SNPRM, with the exceptions of the terms "preexistent equipment," "replaced," "replacement equipment," and "significantly upgraded or otherwise undergoes major modification" were taken from the Merriam Webster's Collegiate Dictionary, Tenth Edition.

³ USTA is now known as the United States Telecom Association.

⁴ Hereafter, the terms "significantly upgraded" or "significant upgraded" will be used in place of the more lengthy term "significantly upgraded or otherwise undergoes major modification."

preexistent equipment. The next step was to determine the manner in which the capabilities, features, or services of preexistent equipment might be "significantly upgraded." The FBI concluded that a carrier could activate, add, or improve a capability, feature or service of its preexistent equipment in a manner that might amount to a "significant upgrade." The main advantage of this third component is that it is self-explanatory. Unlike the terminology in the NPRM definition, it does not create additional questions such as "what action is considered to be a change" or "what is a fundamental or substantial change?" Another benefit of the actions specified in this component is that they are easily observable and measurable.

The fourth component is really the crux of the proposed definition. It is one of the key narrowing factors that makes a particular upgrade "significant." This component is based upon the public safety approach contained in the NPRM and adhered to in this SNPRM. The FBI has refined the NPRM language to make it more consistent with the CALEA statutory language and to address certain industry comments.

The NPRM proposed definition contained a key factor in determining whether a particular upgrade was "significant" for the purposes of the CALEA Cost Recovery Regulations. This factor limited "significant upgrades" to only those changes that impede "law enforcement's ability to conduct lawfully authorized electronic surveillance." The proposed definition retains this factor, but changes the focus slightly. According to CALEA Section 103, the focus is not on law enforcement's ability to conduct lawfully authorized electronic surveillance, but rather on a telecommunications carrier's duty to unobtrusively deliver lawfully authorized intercepted communications and reasonably available call-identifying information to law enforcement in accordance with the assistance capability requirements. See 47 U.S.C. 1002(a). This shift in focus has the added advantage of specifying exactly what must be delivered.

Some commenters have suggested that any final definition of "significant upgrade" should be limited to those modifications that block or prevent electronic surveillance. The FBI believes that the assistance capability requirements require a telecommunications carrier to deliver intercepted communications and reasonably available call-identifying information in their entirety. Modifications that garble or only allow

for the intermittent delivery of lawfully authorized intercepted communications or reasonably available call-identifying information can be just as devastating to a law enforcement investigation as when electronic surveillance is blocked or prevented.

The NPRM definition addressed this concern by concluding that changes which "impede" law enforcement's ability to conduct lawfully authorized electronic surveillance would amount to a "significant upgrade." The definition proposed in this SNPRM substitutes the word "hampers" in place of "impedes." The verb "hamper" means "to interfere with the operation of" and includes the concepts of "hindering" and "impeding." Thus, the threshold for this component is quite low. If a carrier makes a modification to its preexistent equipment that in any way hampers the unobtrusive delivery of lawfully authorized intercepted communications or reasonably available call-identifying information, the fourth component will be satisfied.

The FBI has incorporated one exception into this component based upon industry comments. In response to the NPRM proposed definition, some commenters suggested that the FBI include an intent element in the final definition. They suggested that a "significant upgrade" should only occur when a carrier "knowingly" makes a change that impedes law enforcement's ability to conduct lawfully authorized electronic surveillance. The FBI believes that the insertion of a subjective intent element into the definition would essentially render it useless. However, the FBI has concluded that an objective notice standard could be inserted into this component which would have nearly the same effect. There are basically three ways that a carrier can "learn" that a modification made to its preexistent equipment is hampering the unobtrusive delivery of lawfully authorized intercepted communications or reasonably available call-identifying information to law enforcement. First, the carrier could discover the problem on its own; second, law enforcement could notify the carrier during its attempt to initiate a lawfully authorized electronic surveillance; or third, law enforcement could notify the carrier during the course of conducting lawfully authorized electronic surveillance. Once the carrier learns of the problem, it can either choose to correct the problem at its own expense in a reasonable period of time, or it can choose to do nothing. If the carrier chooses the first option, it has removed the hindrance and a "significant upgrade" has not occurred. Otherwise,

there is the possibility that the modification may amount to a "significant upgrade" provided that all the other conditions of the proposed definition are met.

The SNPRM proposed definition does not attempt to define the term "reasonable period of time." One example following the proposed definition indicates that 24 hours is a reasonable period of time when a law enforcement agency that is attempting to initiate a lawfully authorized electronic surveillance brings the problem to the carrier's attention. Another example indicates that 72 hours is a reasonable period of time when the carrier detects the problem on its own. These examples are not intended to set minimum or maximum thresholds. The FBI understands that the actual reasonable period of time will have to be negotiated between the carrier and the law enforcement agency. In the case of a pending lawfully authorized electronic surveillance, a court may have to determine what period of time is reasonable if the parties cannot agree.

The fifth component is the determination of "when" a "significant upgrade" has occurred. The NPRM definition proposed using the October 25, 1998, assistance capability requirements compliance deadline⁵ for determining whether a "significant upgrade" has occurred. Upon further review, the FBI has decided to abandon any use of the compliance deadline in the SNPRM proposed definition. The FBI made this decision for three reasons.

First, the use of the assistance capability compliance deadline in conjunction with the "significant upgrade" concept is somewhat inconsistent with CALEA's statutory scheme. The compliance deadline is an event that only applies to post-equipment, that is equipment, facilities, or services installed or deployed within a carrier's network after January 1, 1995.⁶ Compare 47 U.S.C. 1002(a) & 1001(b) note with 47 U.S.C. 1007(c)(3) & 1008(d). As discussed previously, the concept of "significant upgrade" only applies to preexistent equipment. Thus, it would be inappropriate to use the compliance deadline for determining

⁵ The FCC extended the assistance capability requirements deadline for J-STD-025 until June 30, 2000.

⁶ The only post-equipment not subject to the compliance deadline is that post-equipment for which the FCC has made a determination that compliance is not reasonably achievable and the Attorney General has not agreed to pay the additional reasonable costs of making such equipment compliant with the assistance capability requirements. 47 U.S.C. 1008(b)(2).

when a "significant upgrade" has occurred.

Second, the compliance deadline is subject to extension under CALEA Section 107(c), which makes it a moving target. The FBI has designed a flexible deployment plan to assist telecommunications carriers in obtaining Section 107(c) extensions from the FCC in exchange for making modifications to their deployment schedules to account for law enforcement electronic surveillance priorities. Rather than one compliance deadline, the flexible deployment plan will result in numerous, equipment-specific compliance deadlines, which would make the tracking of "significantly upgraded" equipment too burdensome for carriers and the FBI.

Third, a careful review of the CALEA statutory language and the industry comments to the NPRM has revealed a much better alternative to using the compliance deadline as the "when" component for determining when a "significant upgrade" has occurred. This alternative is that preexistent equipment will not be considered to be "significantly upgraded" unless the improvement occurred after technology compliant with the assistance capability requirements was reasonably available, or should have been reasonably available, at the time the improvement was made. This component is derived directly from CALEA's statutory language and is another key narrowing factor in the proposed definition that makes a particular upgrade "significant."

The term "significantly upgraded" appears only twice in the CALEA statute. The first mention of the term appears in Section 108(c)(3) which provides that an enforcement order cannot be issued against a carrier unless: (1) The Attorney General has agreed to pay the reasonable costs directly associated with bringing the carrier's preexistent equipment into compliance with the assistance capability requirements; or (2) the carrier's preexistent equipment is replaced or "significantly upgraded." The second place that the term "significantly upgraded" appears in CALEA is Section 109(d), which provides that preexistent equipment will be "considered in compliance" with the assistance capability requirements if the carrier submits a request for payment in accordance with the Cost Recovery Regulations and the Attorney General does not agree to pay the reasonable costs of making the modifications necessary to bring the preexistent equipment into compliance. Such preexistent equipment loses its

"considered to be in compliance" status if it is replaced or "significantly upgraded." 47 U.S.C. 1008(d).

One feature that Section 108(c)(3) and Section 109(d) share is that before either provision can take effect, technology compliant with the assistance capability requirements must have been reasonably available, or should have been reasonably available, for installation or deployment by a carrier. This feature is explicitly stated in Section 108 and assumed in Section 109.

Section 108 specifically requires that before an enforcement order can be issued, the court must make a finding that compliance with the requirements of CALEA would have been reasonably achievable through the application of available technology if timely action had been taken. 47 U.S.C. 1007(a)(2). The language "if timely action had been taken" is the statutory support for the inclusion of the "or should have been reasonably available" language contained in the proposed definition.

Section 109(d) is a reimbursement provision that permits the Attorney General to reimburse a carrier for preexistent equipment if the carrier has submitted a request for payment in accordance with the CALEA Cost Recovery Regulations. 47 U.S.C. 1008(d). The assumption that equipment compliant with the assistance capability requirements is available for installation or deployment within a carrier's network is implied within the context of this subsection. If such equipment was not reasonably available to the carrier, it would be difficult for a carrier to estimate the costs necessary to make the appropriate modifications. Consequently, the carrier might not be able to submit a cost estimate submission to the FBI in accordance with the Cost Recovery Regulations.

If the reasonable availability of CALEA-compliant technology is a prerequisite to either Section 108(c)(3) or Section 109(d), common sense would seem to dictate that it must also be a prerequisite to preexistent equipment being "significantly upgraded." Thus, the "when" component of the SNPRM definition must be that preexistent equipment will not be considered to be "significantly upgraded" unless the improvement occurred after technology compliant with the assistance capability requirements was reasonably available, or should have been reasonably available, at the time the improvement was made.

The last thing that needs to be explained regarding this component is the meaning of the phrase, "should have

been reasonably available." As stated previously, this language is based on the statutory language in Section 108(a)(2) which requires a court to determine whether compliance with the requirements of CALEA is reasonably achievable through the application of available technology or would have been reasonably achievable if timely action had been taken. The FCC determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements by December 31, 1999. The FBI considers this determination to be very reasonable since it established a deadline that was more than five years from the date of CALEA's enactment. In general, the FBI intends to use the December 31, 1999, date as the cutoff for determining whether compliant technology should have been reasonably available for the purposes of the proposed definition, unless a carrier can present a very compelling case that certain technology could not have been reasonably available by that date. For this reason, the FBI chose to use the "should have been reasonably available" language of the proposed definition rather than inserting the December 31, 1999, cutoff date directly into the text of the definition. The FBI feels that this will allow carriers and law enforcement some degree of flexibility in resolving those rare circumstances where compliant technology could not have been available by the December 31, 1999, cutoff date.

The sixth component of the SNPRM proposed definition consists of the determination of when a particular modification will not be considered a "significant upgrade." The NPRM definition contained an exclusion for modifications made as the result of a federal or state statutory mandate.⁷ Based upon comments from the industry and for the sake of completeness, this exclusion has been extended to modifications mandated by federal or state statute, rule, regulation, or administrative order.

The seventh and final component of the SNPRM proposed definition explains the status of preexistent equipment after it has been "significantly upgraded." Several commenters asked for the definition to clarify this point. Consequently, the SNPRM proposed definition explains

⁷ Subsection (b) of the NPRM proposed definition inadvertently omitted the word "state" when referring to statutory mandates. See 63 FR 23230.

that preexistent equipment which has been "significantly upgraded" is the equivalent of equipment, facilities, or services installed or deployed within a carrier's network after January 1, 1995. Essentially, once preexistent equipment has been "significantly upgraded," it becomes post-equipment.

This conclusion is supported by CALEA's statutory language. CALEA divides the universe of telecommunications equipment, facilities, and services into two subsets: preexistent equipment and post-equipment. There are a couple of major distinctions between the two subsets. A carrier's preexistent equipment is eligible for full reimbursement of the reasonable costs necessary to make the preexistent equipment compliant with the assistance capability requirements. 47 U.S.C. 1008(a). A carrier's post-equipment is only eligible for partial reimbursement if the FCC determines that compliance with the assistance capability requirements is not reasonably achievable for that particular post-equipment. 47 U.S.C. 1008(b). Another important distinction between the two subsets is that post-equipment is generally subject to the compliance deadline for the assistance capability requirements,⁸ while preexistent equipment does not need to comply with the deadline. Compare 47 U.S.C. 1002(a) & 1001(b) note with 47 U.S.C. 1007(c)(3) & 1008(d). CALEA makes it clear that once preexistent equipment has been "significantly upgraded" it loses the protection and reimbursement status afforded to preexistent equipment. 47 U.S.C. 1007(c)(3) & 1008(d). Since "significantly upgraded" equipment no longer belongs to the preexistent equipment subset, it can only belong to the remaining post-equipment subset.

The third step in the developmental process is the combination of these seven components in a manner consistent with the ordinary dictionary meaning of the term "significantly upgraded or otherwise undergoes major modification." The following proposed definition is the result of that effort:

Significantly upgraded or otherwise undergoes major modification means a telecommunications carrier has activated, added, or improved a capability, feature, or service of its preexistent equipment that:

(1) hampers the carrier's ability to unobtrusively deliver lawfully authorized

⁸ The only post-equipment not subject to the compliance deadline is that post-equipment for which the FCC has made a determination that compliance is not reasonably achievable and the Attorney General has not agreed to pay the additional reasonable costs of making such equipment compliant with the assistance capability requirements. 47 U.S.C. 1008(b)(2).

intercepted communications and/or reasonably available call-identifying information to law enforcement in accordance with the assistance capability requirements of 47 U.S.C. " 1002 (assistance capability requirements), in a manner that the carrier does not correct at its own expense within a reasonable period of time; and

(2) occurs after technology compliant with the assistance capability requirements was reasonably available, or should have been reasonably available for installation or deployment by a carrier at the time the improvement was made; and

(3) was not mandated by a federal or state statute, rule, regulation, or administrative order.

Preexistent equipment is equipment, facilities, or services that a telecommunications carrier can use to provide its customers or subscribers with the ability to originate, terminate, or direct communications and was installed or deployed within the carrier's network on or before January 1, 1995. Preexistent equipment that has been "significantly upgraded or otherwise undergoes major modification" is the equivalent of equipment, facilities, or services installed or deployed within a carrier's network after January 1, 1995.

c. Example Summaries

The last step in the developmental process was the creation of examples to help illustrate the practical operation of the definition. The FBI proposes to add 15 examples following the text of the SNPRM proposed definition of "significantly upgraded or otherwise undergoes major modification." The actual language of the examples is provided in the regulatory text section of this SNPRM. This section summarizes the examples.

The first example explains that preexistent equipment is not "significantly upgraded" when a carrier makes a modification that affects capacity, because the "significantly upgraded" definition is tied to the assistance capability requirements, and has no bearing on capacity requirements.

The second example illustrates the requirement that preexistent equipment must be used by a carrier to provide its customers with the ability to originate, terminate, or direct communications.

The third and fourth examples demonstrate situations where a carrier modifies a portion of its network architecture from circuit-mode to packet-mode switching technology.

The fifth example involves a carrier modifying its preexistent equipment to improve network efficiencies and make existing services easier for customers to use in a manner that did not amount to a "significant upgrade."

The sixth example involves a carrier making an improvement to correct Y2K deficiencies that did not amount to a "significant upgrade."

The seventh example explains that a modification causing law enforcement to relocate its point of intercept from the local loop to the carrier's central office was not a "significant upgrade."

The eighth example illustrates the circumstances under which the activation of a dormant call forwarding feature by a telecommunications carrier amounts to a "significant upgrade."

The ninth example illustrates how a generic software upgrade can amount to a "significant upgrade."

The tenth example demonstrates a situation where an improvement had no adverse effect on the delivery of intercepted communications to law enforcement, but did result in the intermittent garbling of reasonably available call-identifying information. This hindrance amounted to a "significant upgrade" in the absence of the carrier taking action to correct the problem.

The eleventh example illustrates a carrier detecting and then correcting a problem caused by a modification made to its preexistent equipment.

The twelfth example illustrates a carrier correcting a problem caused by a modification made to its preexistent equipment after being notified by law enforcement.

The thirteenth example demonstrates the consequences of a carrier deciding not to correct a problem caused by an earlier modification to its preexistent equipment.

The fourteenth example demonstrates the effect of modifications mandated by federal statutes and regulations.

The final example explains the effect of a "significant upgrade" on preexistent equipment.

d. Conclusion

The proposed definition of "significantly upgraded or otherwise undergoes major modification" and the 15 examples are consistent with the language and intent of both the statute and the CALEA Cost Recovery Regulations. The proposed definition strikes an appropriate balance between the telecommunications industry's need to introduce new technologies, features, and services, and its obligation under CALEA to unobtrusively deliver intercepted communications and reasonably available call-identifying information to law enforcement.

2. Replaced

The term "replaced" can be found in Section 100.11(a)(1) of the CALEA Cost

Recovery Regulations. Commenters responding to the ANPRM and the NPRM have urged the FBI to define the term "replaced" in addition to the term "significant upgrade." Given the importance of this term in determining reimbursement eligibility for equipment, facilities, or services installed or deployed on or before January 1, 1995, the FBI has decided to define the term "replaced" in this rulemaking proceeding. This SNPRM proposes to amend Section 100.10 of the CALEA Cost Recovery Regulations by adding a definition for the term "replaced" and twelve examples of the definition's operation.

a. Background

The FBI's decision to define the term "replaced" is a reversal of the position that it took in the NPRM. In the NPRM, the FBI stated that it did not intend to define the term "replaced," because its meaning is both clear and common. 63 FR 23234. As the FBI revised its definition of the term "significantly upgraded," it became clear that several components of the revised definition could be incorporated into a definition for the term "replaced." After conducting a preliminary analysis, the FBI concluded that defining the term "replaced" was in the best interests of the law enforcement community and the telecommunications industry.

In developing the definition of the term "replaced" the FBI considered all comments on the subject submitted in response to the ANPRM and NPRM. Since the FBI stated categorically in the NPRM that it had no intention of defining the term, most NPRM commenters did not address the issue, other than to request the FBI reconsider its position.

Four commenters, AirTouch Communications, AT&T Wireless Services, Inc., the Cellular Telephone Industry Association, and the Telecommunications Industry Association, submitted suggested definitions in response to the FBI's ANPRM. Three of the commenters supported language that defined the term "replaced" as meaning the installation of equipment, facilities, or services which became commercially available after January 1, 1995, and which are not upgrades or modifications of previously deployed equipment, facilities, or services.⁹ The FBI declined to adopt this definition because it does

not address all the elements needed to make a determination of whether a telecommunications carrier replaced its preexistent equipment.

The fourth commenter suggested defining "replaced" as meaning the total removal and replacement of equipment by an all new system at that location serving the same customers. One problem with this suggested definition is that a replacement occurs only when preexistent equipment is replaced by "an all new system." Since a carrier might choose to substitute new or used equipment in place of its preexistent equipment, this limitation is inappropriate. Otherwise, the FBI believes that the spirit of this suggested definition has been incorporated into the SNPRM proposed definition.

In many respects, the industry comments responding to the ANPRM and NPRM regarding the "significantly upgraded" definition were also very useful in developing the "replaced" definition. The FBI relied upon these comments and the analytical approach used in the development of the "significantly upgraded" definition to create a definition for the term "replaced" that is consistent with CALEA's statutory language. The next section describes the process that the FBI used to develop the SNPRM proposed definition.

b. The SNPRM Proposed Definition

The FBI's primary goal in developing the proposed definition for the term "replaced" was identical to that for the proposed definition of "significantly upgraded," that is, to create a self-explanatory definition consistent with CALEA's statutory language. The definitional development of the term "replaced" followed a route similar to that used for the "significantly upgraded" proposed definition. The FBI began the process of developing the proposed definition of the term "replaced" by examining its dictionary definition. The verb "replace" means "to take the place of [especially] as a substitute or successor." The next step in the definitional process was the determination of what components could be derived from the CALEA statutory language and incorporated into this simple dictionary definition.

The FBI has determined that there are at least seven components that need to be incorporated into the SNPRM proposed definition of the term "replaced." The first component is the determination of what can be "replaced." According to CALEA, the only item capable of being "replaced" is preexistent equipment, that is equipment, facilities, or services that a

telecommunications carrier can use to provide its customers or subscribers with the ability to originate, terminate, or direct communications and was installed or deployed within a carrier's network on or before January 1, 1995. See 47 U.S.C. 1002(a), 1007(c)(3), and 1008(a) & (d). This explanation of preexistent equipment is included within the SNPRM proposed definition.

The second component is the determination of what is replacing the preexistent equipment. The FBI has elected to identify this component as "replacement equipment." Like preexistent equipment, replacement equipment must also be used by a telecommunications carrier to provide its customers or subscribers with the ability to originate, terminate, or direct communications. See 47 U.S.C. 1002(a). Unlike preexistent equipment, there is no requirement that the equipment, facilities, or services that make up replacement equipment be installed or deployed in a carrier's network on or before January 1, 1995. Replacement equipment can be either new or used. It is also possible that, in some instances, the replacement equipment might itself be preexistent equipment. Putting these ideas together, the FBI proposes that replacement equipment is equipment, facilities, or services, whether new or used, that a telecommunications carrier can use to provide its customers or subscribers with the ability to originate, terminate, or direct communications and is installed or deployed within the carrier's network. This explanation of replacement equipment is included within the SNPRM proposed definition.

The third component is the determination of what sort of action will amount to a replacement of preexistent equipment. For this determination, the FBI simply relied upon the dictionary definition of the verb "replaced." Thus, the action needed for a replacement occurs when replacement equipment is substituted in place of preexistent equipment.

The fourth component is the determination of who is responsible for the consequences of substituting replacement equipment in place of preexistent equipment. The statutory language is clear that a replacement can only be performed on a telecommunications carrier's preexistent equipment. See 47 U.S.C. 1007(c)(3) & 1008(d). For the purposes of the proposed definition, the telecommunications carrier bears the ultimate responsibility for a substitution amounting to a replacement of its preexistent equipment, regardless of whether the carrier or some other party, for example, a telecommunications

⁹One of these three commenter's definitions contained a typographical error, mistakenly substituting the word "before" where the other commenters had used the word "after." This minor error does not affect the analysis of the suggested definition.

equipment manufacturer, actually installed or deployed the replacement equipment into the carrier's network.

The fifth component is the determination of "when" a replacement has occurred. Learning from its analysis of the "significantly upgraded" definition, the FBI has determined that preexistent equipment will be considered "replaced" only when the substitution occurred after technology compliant with the assistance capability requirements was reasonably available, or should have been reasonably available, for installation or deployment by the telecommunications carrier at the time the substitution was made. As discussed previously during the detailed analysis of the "significantly upgraded" fifth component, this component is required by the statutory language of CALEA. See 47 U.S.C. 1007(c)(3) & 1008(d). Also, the "should have been reasonably available" language is based on the statutory language of Section 108(a)(2) which requires a court to determine whether compliance with the requirements of CALEA is reasonably achievable through the application of available technology or would have been reasonably achievable if timely action had been taken.

The last aspect of this component is the FBI's interpretation of the phrase, "should have been reasonably available." As discussed previously, the FCC determined that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements by December 31, 1999. In general, the FBI intends to use this December 31, 1999, date as the cutoff for determining whether compliant technology should have been reasonably available for the purposes of the proposed definition of "replaced," unless a carrier can present a very compelling case that certain technology could not have been reasonably available by that date. For this reason, the FBI chose to use the "should have been reasonably available" language of the proposed definition rather than inserting the December 31, 1999, cutoff date directly into the text of the definition. The FBI feels that this will allow carriers and law enforcement some degree of flexibility in resolving those rare circumstances where compliant technology could not have been available by the December 31, 1999, cutoff date.

The sixth component of the SNPRM proposed definition explains the status of preexistent equipment after it has been "replaced." This component is identical to the seventh component of

the "significantly upgraded" SNPRM proposed definition, and is based upon the reasoning discussed above. Once preexistent equipment has been "replaced," it is the equivalent of equipment, facilities, or services installed or deployed within a carrier's network after January 1, 1995.

The seventh and final component of the SNPRM proposed definition explains the status of replacement equipment after it is substituted in place of preexistent equipment. The status is dependent upon whether the replacement equipment is itself preexistent equipment that has not been "replaced," or simply new or used equipment, facilities, or services installed or deployed in a carrier's network after January 1, 1995. If the replacement equipment is itself preexistent equipment that has not been "replaced," and is substituted in place of other preexistent equipment, the replacement equipment retains its reimbursement eligibility as preexistent equipment. The FBI has included this explanation only for the sake of completeness and recognizes that this provision would rarely, if ever, be triggered by a carrier's actions in the ordinary course of business. This is the only exception to the general rule that replacement equipment is the equivalent of equipment, facilities, or services installed or deployed within a carrier's network after January 1, 1995.

The third step in the developmental process was to combine these seven components in a manner consistent with the ordinary dictionary meaning of the term "replaced." The following proposed definition is the result of that effort:

Replaced means that a telecommunications carrier substituted replacement equipment in place of preexistent equipment after technology compliant with the assistance capability requirements of 47 U.S.C. 1002 (assistance capability requirements) was reasonably available, or should have been reasonably available, for installation or deployment by a carrier at the time the substitution was made. Replacement equipment is equipment, facilities, or services, whether new or used, that a telecommunications carrier can use to provide its customers or subscribers with the ability to originate, terminate, or direct communications and is installed or deployed within the carrier's network. Preexistent equipment is equipment, facilities, or services that a telecommunications carrier can use to provide its customers or subscribers with the ability to originate, terminate, or direct communications and was installed or deployed within the carrier's network on or before January 1, 1995. Preexistent equipment that has been "replaced" is the equivalent of equipment, facilities, or services installed or deployed

within a carrier's network after January 1, 1995. When replacement equipment is itself preexistent equipment that has not been "replaced," and is substituted in place of other preexistent equipment, the replacement equipment retains its reimbursement eligibility as preexistent equipment. Otherwise, replacement equipment is the equivalent of equipment, facilities, or services installed or deployed within a carrier's network after January 1, 1995.

c. Example Summaries

The final step in the developmental process was the creation of examples to help illustrate the practical operation of the "replaced" definition. The FBI proposes to add twelve examples following the text of the SNPRM proposed definition of "replaced." The actual language of the examples is provided in the regulatory text section of this SNPRM. This section summarizes the examples.

The first example explains that repairs made to preexistent equipment do not amount to a "replacement" so long as the preexistent equipment remains in place within the carrier's network.

The second example illustrates the requirement that the preexistent equipment or replacement equipment must be used by a carrier to provide its customers or subscribers with the ability to originate, terminate, or direct communications.

The third example addresses a situation when new equipment is added to a central office, but there is no substitution of replacement equipment in place of preexistent equipment.

The fourth example explains the effect of replacing damaged preexistent equipment.

The fifth and sixth examples explain how the movement of equipment within a carrier's network can affect whether preexistent equipment is considered to be "replaced."

The seventh and eighth examples explain the effect of replacing preexistent equipment with other preexistent equipment.

The ninth example explains the effect of a sale of preexistent equipment when the preexistent equipment remains in place.

The tenth example explains the effect of a sale of preexistent equipment when the preexistent equipment is removed and installed in another carrier's network.

The eleventh example illustrates the replacement of analog equipment with digital equipment.

The final example illustrates the replacement of circuit-mode equipment with packet-mode equipment.

d. Conclusion

The proposed definition of "replaced" is consistent with the language and intent of both the statute and the CALEA Cost Recovery Regulations. It ensures that the amount of preexistent equipment remains relatively static until technology compliant with the assistance capability requirements is reasonably available, or should have been reasonably available, for installation or deployment by a carrier at the time a substitution is made. The proposed definition strikes an appropriate balance between the telecommunications industry's need to introduce new technologies, features, and services, and its obligation under CALEA to unobtrusively deliver intercepted communications and reasonably available call-identifying information to law enforcement.

F. Discussion of Comments Received in Response to Notice of Proposed Rulemaking

In response to the NPRM, the FBI received comments from ten representatives of the telecommunications industry. All comments have been considered in preparing this SNPRM. In developing the definitions contained in this SNPRM, the FBI has also relied on the input of other governmental agencies and telecommunications industry experts. Significant comments received in response to the NPRM and any significant changes are discussed below.

1. Definition of "Installed or Deployed"

Several commenters criticized the definition of the term "installed or deployed" contained in Section 100.10 of the CALEA Cost Recovery Regulations and asked for a revision of the term. These criticisms have no bearing on this particular rulemaking proceeding. Moreover, the term "installed or deployed" as defined by the FBI in the CALEA Cost Recovery Regulations was recently upheld by the United States District Court for the District of Columbia. *USTA v. FBI*, No. 98-2010 (D.D.C. August 28, 2000).

2. Definition of "Replaced"

Some of the commenters who responded to the ANPRM requested that the FBI define the term "replaced." In the NPRM, the FBI indicated that it did not intend to define "replaced." In their comments on the NPRM, some commenters restated that the term "replaced" should be defined. Upon further consideration, the FBI has decided to publish a proposed definition of the term in this SNPRM.

3. Federal and State Mandates

Several commenters pointed out that the text of subsections 100.22(a) and (b) of the NPRM proposed definition published in the *Federal Register* was inconsistent with regard to federal and state mandates. See 63 FR 23231 at 23239. Those commenters posited, correctly, that this inconsistency was the result of an editorial oversight. When a telecommunications carrier makes an improvement to its preexistent equipment mandated by a federal or state statute, rule, regulation, or administrative order, the SNPRM proposed definition provides that equipment undergoing such an improvement will not be considered to have been "significantly upgraded."

4. Status of "Significantly Upgraded" Preexistent Equipment

A couple of commenters stated that the CALEA Cost Recovery Regulations should clarify that preexistent equipment which is "significantly upgraded" is still eligible for reimbursement under the "reasonable achievability" provisions of Section 109(b). The FBI incorporated this suggestion into the SNPRM proposed definitions of "replaced" and "significantly upgraded." If preexistent equipment is replaced or "significantly upgraded," it is the equivalent of post-equipment, that is, equipment, facilities, or services installed or deployed within a carrier's network after January 1, 1995. This means that once preexistent equipment has been replaced or "significantly upgraded" it is eligible for the same procedural protections afforded to post-equipment, including the possibility of obtaining limited reimbursement under Section 109(b). On the other hand, such preexistent equipment must also comply with all of the requirements that CALEA imposes upon post-equipment.

5. Prohibition on the Development and Deployment of Advanced Technologies

Section 103(b)(1)(B) states that no law enforcement agency may prohibit the adoption of any equipment, facility, service, or feature by any provider of a wire or electronic communications service, any manufacturer of telecommunications equipment, or any provider of telecommunications support services. Some commenters have asserted that the NPRM proposed definition is inconsistent with this statutory requirement and may impede the development and deployment of new technologies contrary to the intent of CALEA. The FBI disagrees with this assertion.

Nothing in either the NPRM proposed definition or the SNPRM proposed definition of "significantly upgraded" prohibits the development or deployment of advanced technologies. The decision to develop new technologies is a matter within the sound business discretion of telecommunications equipment manufacturers. Similarly, a carrier's decisions to deploy new technologies or upgrade preexistent equipment with advanced technologies are matters within its sound business discretion. CALEA envisions that manufacturers will incorporate the assistance capability requirements into their newly developed equipment, regardless of whether that new technology will eventually be used by a carrier to modify or upgrade its preexistent equipment. The purpose of the "replaced or significantly upgraded, or otherwise undergoes major modification" language in Section 109(d) is to encourage carriers to incorporate the assistance capability requirements into business decisions regarding new or preexistent equipment.

6. Public Safety Approach Is Inconsistent With CALEA

One commenter asserted that the FBI's public safety approach to defining the term "significantly upgraded" is inconsistent with CALEA. Contrary to this assertion, the FBI believes that CALEA is, first and foremost, a public safety statute. The FBI bases this conclusion on the statutory language of the statute and its legislative history. The term "public safety" actually appears in the text of CALEA. In fact, the first factor that the FCC must consider in making a reasonably achievable determination is "the effect on public safety and national security." 47 U.S.C. 1008(b)(1)(A). Perhaps the clearest statement that CALEA is a public safety statute can be found in its legislative history which states that the purpose of the law "is to preserve the government's ability, pursuant to court order or other lawful authorization, to intercept communications involving advanced technologies * * * while protecting the privacy of communications and without impeding the introduction of new technologies, features or services." H.R. Rep. No. 103-827, pt. 1, at 9 (1994). The legislative history notes that "the question of whether companies have any obligation to design their systems such that they do not impede law enforcement interception has never been adjudicated" and goes on to state that "the purpose of the legislation is to further define the industry duty to

cooperate and to establish procedures based on public accountability and industry standards-setting." Id. at 13-14. Given this language, the FBI believes that defining the term "significantly upgraded" in terms of public safety is entirely consistent with the intent of CALEA.

7. Meaning of "Impedes"

Several commenters expressed their concern that the NPRM proposed definition did not adequately explain the meaning of the term "impedes." Some commenters stated that the focus of the term should be on the assistance capability requirements rather than on law enforcement's ability to conduct electronic surveillance. One commenter asserted that the term should only include modifications that "block" or "prevent" electronic surveillance. Another commenter requested the FBI to provide examples of how electronic surveillance could be impeded. The FBI has addressed these concerns in the SNPRM proposed definition.

The NPRM proposed definition focused on modifications that impede law enforcement's ability to conduct lawfully authorized electronic surveillance. Some commenters stated that the focus of the term "impedes" should instead be on how a particular modification affects the assistance capability requirements. The FBI agrees with this statement and has incorporated the concept into the SNPRM proposed definition. The focus of CALEA Section 103 is not so much on law enforcement's ability to conduct lawfully authorized electronic surveillance, but rather on a telecommunications carrier's duty to unobtrusively deliver lawfully authorized intercepted communications and reasonably available call-identifying information to law enforcement in accordance with the assistance capability requirements. See 47 U.S.C. 1002(a). This subtle shift in focus has the added advantage of providing better guidance to carriers about the kinds of hindrances that might amount to a "significant upgrade."

The FBI disagrees with the assertion that the word "impedes" is limited to those modifications that "block" or "prevent" electronic surveillance. The verb "impede" means "to interfere with or slow the progress of." There are actions short of blocking or preventing that can also interfere with or slow the delivery of intercepted communications or reasonably available call-identifying information to law enforcement. For example, modifications that garble or only allow for the intermittent delivery of intercepted communications or

reasonably available call-identifying information to law enforcement can be just as devastating to an investigation as when electronic surveillance is blocked or prevented.

To ensure that the SNPRM proposed definition of "significantly upgraded" is not limited to modifications that block or prevent electronic surveillance, the FBI has decided to use the term "hampers" in lieu of the word "impedes." The verb "hamper" means "to interfere with the operation of" and includes the concepts of "impeding" and "hindering." In this respect, the term "hampers" is broader and slightly more precise than the term "impedes." The term "hampers" appropriately establishes a fairly low threshold for improvements or modifications that interfere with the carrier's ability to deliver intercepted communications and reasonably available call-identifying information to law enforcement.

In response to this last concern, six of the 15 examples following the SNPRM proposed definition of "significantly upgraded" or otherwise undergoes major modification" illustrate hampering and non-hampering modifications. See Examples 5-10.

8. Unintended Impediments

A couple of NPRM commenters suggested that the definition of "significant upgrade" should contain a specific intent element. Specifically, one commenter suggested that the word "knowingly" be added before the phrase "impedes law enforcement's ability to conduct lawfully authorized electronic surveillance." The FBI recognized the merit of this suggestion, but was wary of injecting a subjective intent element into the definition out of concern that it would make "significant upgrade" determinations very difficult. As noted previously, the FBI has included an objective notice standard into the SNPRM proposed definition that allows a telecommunications carrier to correct an unintended impediment at its own expense within a reasonable period of time once the carrier learned that its improvement was hampering the unobtrusive delivery of lawfully authorized intercepted communications and/or reasonably available call-identifying information to law enforcement in accordance with the assistance capability requirements.

9. October 25, 1998, Is an Arbitrary Date

Several commenters argued that the October 25, 1998 date at which the NPRM proposed definition was bifurcated was arbitrary in that CALEA-compliant solutions would not be available by that date, thereby obviating

the government's rationale for bifurcating the definition in the first place. The FBI disagrees that the October compliance date was an arbitrary date. The purpose of using the October compliance date was to protect carriers by making sure that CALEA-compliant solutions were available prior to making modifications that would amount to a "significant upgrade."

The FBI considered improving the NPRM proposed definition by substituting the words "capability compliance date" in place of the date "October 25, 1998" to address possible extensions granted by the FCC.

However, upon further examination of the CALEA statutory language, the FBI determined that the capability compliance date was really a concept that applied to post-equipment. For the reasons stated earlier, the compliance date concept was dropped from the SNPRM proposed definition. In its place, the FBI inserted a requirement into the proposed definition that a "significant upgrade" could not occur unless technology compliant with the assistance capability requirements was reasonably available, or should have been reasonably available for installation or deployment at the time a carrier made an improvement to its preexistent equipment. Thus, any industry concerns regarding the capability compliance date have been rendered moot.

10. Availability of CALEA-Complaint Technology

Nearly every commenter asserted that a pre-condition for the occurrence of a "significant upgrade" was the availability of CALEA-compliant technology. These commenters argued persuasively that carriers could not be expected to include the CALEA solution along with any "significant upgrade" if such a solution did not exist.

In response to these comments and careful review of the CALEA statutory language, the FBI decided to incorporate a requirement into the proposed definition that a "significant upgrade" could not occur unless technology compliant with the assistance capability requirements was reasonably available, or should have been reasonably available for installation or deployment by a carrier at the time it made an improvement to its preexistent equipment. As discussed above, the FBI intends to rely on the FCC's determination that December 31, 1999, was the date by which manufacturers should have been able to provide telecommunications carriers with CALEA-compliant equipment. The FBI recognizes that there may be some

limited circumstances where a carrier can make a compelling case that certain technology was not reasonably available by the December 31, 1999, date. The language of the SNPRM proposed definition allows carriers and law enforcement some degree of flexibility in resolving these sorts of issues.

11. Change From Analog to Digital Switching

In the NPRM the FBI provided an example of a modification "about which no argument can be made" regarding its significance, i.e., a change from analog to digital switching. 63 FR 23234. As it turns out, this example was a poor choice for illustrating a change that "fundamentally alters the nature or type of the existing telecommunications equipment," because the FBI is not aware of any instance where a carrier has made modifications to an analog switch that converted it into a digital switch. Rather, carriers typically "replace" analog switches with digital switches. Thus, a change from analog to digital switching cannot typically be a "significant upgrade" because it does not involve activation, addition, or improvement to preexistent equipment's capabilities, features, or services.

12. Just Compensation

One commenter claims that the CALEA Cost Recovery Regulations are unfairly restrictive, requiring carriers to incur costs for the benefit of society as a whole without just compensation. As such, this commenter broadly asserts that the Just Compensation Clause of the Fifth Amendment governs the payment of such "reasonable costs" and that the final decision on reimbursement should be judicial. The FBI disagrees and asserts that the CALEA Cost Recovery Regulations do not implicate the protections of the Fifth Amendment.

The Fifth Amendment provides that no "private property shall be taken for public use without just compensation." Takings claims can fall into two separate categories: (1) Physical takings which result from physical invasions of a property owner's land; and (2) regulatory takings "where regulation denies all economically beneficial or productive use of land." *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992). Since the CALEA Cost Recovery Regulations do not authorize a physical intrusion upon private property or authorize others to do so, a physical taking analysis is unnecessary. See *Hall v. City of Santa Barbara*, 833 F.2d 1270, 1275 (9th Cir. 1986).

An examination of the CALEA Cost Recovery Regulations under a regulatory

taking analysis reveals that the operation of the "significantly upgraded" definition does not amount to a taking for the purposes of the Fifth Amendment. Regulatory taking cases arise when the value or usefulness of private property is diminished by regulatory action not involving a physical occupation of the property. *Hall*, 833 F.2d at 1275. In *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978), the Supreme Court articulated three factors to consider in determining whether there has been a regulatory taking. These factors are: (1) The character of the government action, (2) the economic impact of the action upon the property owner; and (3) the extent to which the regulation has interfered with the property owner's distinct investment-backed expectations. In *Penn Central* the Supreme Court applied these factors and held that there was no regulatory taking when New York City prohibited Penn Central from building a 55-story office tower over its Grand Central Terminal, despite the drastic diminution in the value and usefulness of Penn Central's property.

The FBI previously analyzed the *Penn Central* factors and concluded that the NPRM proposed definition did not amount to a regulatory taking.¹⁰ Reapplying these factors to the SNPRM proposed definition of "significantly upgraded" yields the same conclusion. First, the FBI's proposed definition of this term in its CALEA Cost Recovery Regulations is an appropriate exercise of its authority under the statute. See 47 U.S.C. 1008(e). The proposed definition does not deny any telecommunications carrier access to its property, nor does it prevent a carrier from using its equipment as it sees fit. The proposed definition merely allows law enforcement and telecommunications carriers the ability to determine when, if ever, certain preexistent equipment becomes post equipment by virtue of having been "significantly upgraded."

Second, the economic impact of the proposed definition does not amount to a regulatory taking. Preexistent equipment that has been "significantly upgraded" has the same status as post-equipment and may still be eligible for some limited reimbursement should the FCC determine that compliance is not reasonably achievable for that particular preexistent equipment. 47 U.S.C. 1008(b). The decision to upgrade preexistent equipment is a matter

within the sound business discretion of a telecommunications carrier. Such a decision will typically require an assessment of the economic impact on the carrier. The decision to proceed with an upgrade would seem to indicate that the carrier determined that the benefits of upgrading outweighed the possible costs, e.g., the loss of preexistent equipment reimbursement eligibility.

Third, the SNPRM proposed definition does not meaningfully interfere with a telecommunications carrier's "reasonable investment-backed expectations." The proposed definition will not deprive a carrier of a reasonable return on its preexistent equipment. A telecommunications carrier is not deprived of the use of its preexistent equipment once it has been "significantly upgraded." Furthermore, a carrier can seek an extension of the capability compliance deadline from the FCC for any of its "significantly upgraded" preexistent equipment. 47 U.S.C. 1006(c).

G. Regulatory Evaluation

1. Executive Order 12630 (Takings)

The amendments proposed in the SNPRM will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights." 53 FR 8859, March 15, 1988.

2. Executive Order 12866 (Regulatory Planning and Review)

The FBI examined these proposed rules in light of Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, September 30, 1993), and has found that it constitutes a significant regulatory action only under section 3(f)(4). The FBI has met all the requirements of Executive Order 12866, Section 6, and this SNPRM has been reviewed by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

3. Executive Order 12875 (Enhancing the Intergovernmental Partnership)

This rulemaking proceeding does not create an unfunded mandate upon a state, local, or tribal government and involves amendments to the statutorily required CALEA Cost Recovery Regulations. Accordingly, the requirements of Section 1(a) of Executive Order 12875 do not apply to this rulemaking proceeding.

¹⁰ Implementation of Section 109 of the Communications Assistance for Law Enforcement Act: Proposed Definition of "Significant Upgrade or Major Modification" 63 FR at 23234-23235.

4. Executive Order 12988 (Civil Justice Reform)

This proposed rulemaking proceeding meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 5, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

5. Executive Order 13132 (Federalism)

Executive Order 13132, "Federalism" (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the need for such actions. The FBI has examined this SNPRM and determined that it does not preempt state law and does not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

6. Regulatory Flexibility Act

As discussed in greater detail above, on April 28, 1998, at 63 FR 23231, the FBI published the NPRM on this subject proposing a definition of "significant upgrade." At that time, the FBI determined that the rule "may have a significant economic impact upon a substantial number of small telephone companies identified by the SBA." Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603 *et seq.*, the NPRM contained an Initial Regulatory Flexibility Analysis (Initial RFA) on the expected significant economic impact on small entities of the proposed definition. The Initial RFA considered all reasonable regulatory alternatives that would minimize the rule's economic burdens for the affected small entities, while achieving the objectives of the statute. See 63 FR 23236-38. The FBI did not receive any comments regarding the Initial RFA.

This SNPRM contains a Further Regulatory Flexibility Analysis (Further RFA) on the expected economic impact on small entities resulting from the proposed minor technical change, and the addition of definitions and examples for the terms "replaced" and "significantly upgraded." The topics that are considered by the Further RFA parallel those that were considered in the Initial RFA. The FBI concludes in

this Further RFA that these proposed amendments will not have a significant economic impact on a substantial number of small entities.

If you believe that your business, organization, or governmental jurisdiction qualifies as a small entity and that these proposed amendments would have a significant economic impact on it, please submit your comments explaining why you believe it qualifies and how and to what degree these proposed amendments would economically affect it. The comments must be sent to the Telecommunications Contracts and Audit Unit at the address listed in the ADDRESSES section.

7. Small Business Regulatory Enforcement Fairness Act of 1996

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

Also, pursuant to Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the FBI wants to assist small entities in understanding these proposed amendments so that they can better evaluate their effects on them and participate in this rulemaking proceeding. If these amendments would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

8. Paperwork Reduction Act

This SNPRM proposes to amend the CALEA Cost Recovery Regulations. The reporting and record keeping requirements of the CALEA Cost Recovery Regulations have been assigned OMB Control Number 1110-0022, which expires on April 30, 2003.

9. Unfunded Mandates Reform Act

The FBI has examined these proposed rules in light of the Unfunded Mandates Reform Act and has tentatively concluded that these proposed rules will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted

annually for inflation) in any one year. Therefore, no actions are required under the Unfunded Mandates Reform Act.

10. National Technology Transfer and Advancement Act

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

H. Further Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the FBI has prepared this Further Regulatory Flexibility Analysis (Further RFA) on the possible significant economic impact on small entities by the rules proposed in this supplemental notice of proposed rulemaking (SNPRM). The FBI concludes that these proposed amendments will not have a significant economic impact on a substantial number of small entities. Written public comments are requested on this Further RFA. Comments must be identified as responses to the Further RFA and must be filed by the deadlines for comments on the SNPRM provided in the **DATES** section. The FBI will send a copy of this SNPRM, including the Further RFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with Section 603(a). In addition, this SNPRM and the Further RFA will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

This rulemaking proceeding was initiated to obtain comments concerning the FBI's proposed amendments to the CALEA Cost Recovery Regulations. 28 CFR Part 100. Specifically, these amendments would: (1) Make a minor technical change to harmonize the rule's language with CALEA's statutory language; (2) add a definition and examples for the term "replaced"; and

(3) add a definition and examples for the term "significantly upgraded or otherwise undergoes major modification." These definitions are needed to determine whether a telecommunications carrier's preexistent equipment remains eligible for CALEA Section 109(a) reimbursement under the CALEA Cost Recovery Regulations. The objective of this SNPRM is to define these terms in a manner that strikes an appropriate balance between the telecommunications industry's need to introduce new technologies, features, and services with a telecommunications carrier's obligation under CALEA to unobtrusively deliver intercepted communications and reasonably available call-identifying information to law enforcement.

2. Legal Basis

The proposed action is authorized under the Communications Assistance for Law Enforcement Act, Public Law 103-414, 108 Stat. 4279 (1994), 47 U.S.C. 1008(e).

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply¹¹

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data published by the FCC in its Trends in Telephone Service report.¹² In this report, the FCC indicated that there are 4,144 interstate carriers.¹³ These carriers include local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.¹⁴ Below, we discuss the total estimated number of telephone

companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are subject to CALEA. We have included small incumbent Local Exchange Carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.¹⁵

a. Total Number of Telephone Companies Affected

The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.¹⁶ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small Incumbent Local Exchange Carriers (ILECs) because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

¹⁵ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). In an abundance of caution, the FBI will include small incumbent LECs in this Further RFA.

¹⁶ U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

b. Wireline Carriers and Service Providers

The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.¹⁷ According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.¹⁸ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.

c. Local Exchange Carriers

Neither the FCC nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.¹⁹ According to the most recent Telecommunications Industry Revenue data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services.²⁰ We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate

¹⁷ 1992 Economic Census, U.S. Bureau of the Census, at Firm Size 1-123.

¹⁸ 13 CFR 121.201, SIC code 4812.

¹⁹ 13 CFR 121.201, SIC code 4812.

²⁰ FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (March 2000).

¹¹ All of the estimates contained in this section of the Further RFA are based upon estimates made by the FCC in its Initial RFA regarding its final rule on assessment and collection of regulatory fees for fiscal year 2000, which was published in the *Federal Register* on July 18, 2000. See 65 FR 44576.

¹² FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (March 2000).

¹³ Id.

¹⁴ 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

that fewer than 1,348 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.

d. Interexchange Carriers

Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.²¹ According to the most recent Trends in Telephone Service data, 171 carriers reported that they were engaged in the provision of interexchange services.²² We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 171 small entity IXCs that may be affected by the proposed rules, if adopted.

e. Competitive Access Providers

Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to competitive access providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.²³ According to the most recent Trends in Telephone Service data, 212 CAP/Competitive Local Exchange Carriers (CLECs) and 10 other LECs reported that they were engaged in the provision of competitive local exchange services.²⁴ We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 212 small entity CAPs/CLECs and 10 other LECs that may be affected by the proposed rules, if adopted.

f. Operator Service Providers

Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.²⁵ According to the most recent Trends in Telephone Service data, 24 carriers reported that they were engaged in the provision of operator services.²⁶ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 24 small entity operator service providers that may be affected by the proposed rules, if adopted.

g. Resellers

Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.²⁷ According to the most recent Trends in Telephone Service data, 388 toll and 54 local entities reported that they were engaged in the resale of telephone service.²⁸ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 388 small toll resellers and 54 small local resellers that may be affected by the proposed rules, if adopted.

h. Fixed Satellite Transmit/Receive Earth Stations

The FCC estimates that there are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. Since the FCC does not request nor collect annual revenue information,

we are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

i. Fixed Satellite Small Transmit/Receive Earth Stations

The FCC estimates that there are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. Since the FCC does not request nor collect annual revenue information, we are unable to estimate the number of fixed satellite small transmit/receive earth stations that would constitute a small business under the SBA definition.

j. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems

These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The FCC has processed 377 applications. Since the FCC does not request nor collect annual revenue information, we are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

k. Mobile Satellite Earth Stations

According to the FCC, there are 11 mobile satellite earth station licensees. Since the FCC does not request nor collect annual revenue information, we are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

l. Radio Determination Satellite Earth Stations

According to the FCC, there are four radio determination satellite earth station licensees. Since the FCC does not request nor collect annual revenue information, we are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

m. Space Stations (Geostationary)

The FCC's records reveal that there are 64 geostationary space station licensees. Since the FCC does not request nor collect annual revenue information, we are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

²¹ 13 CFR 121.201, SIC code 4812.

²² FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (March 2000).

²³ 13 CFR 121.201, SIC code 4812.

²⁴ FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (March 2000).

²⁵ 13 CFR 121.201, SIC code 4812.

²⁶ FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (March 2000).

²⁷ 13 CFR 121.201, SIC code 4812.

²⁸ FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (March 2000).

n. Space Stations (Non-Geostationary)

According to the FCC, there are 12 non-geostationary space station licensees, of which only three systems are operational. Since the FCC does not request or collect annual revenue information, we are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

o. Cellular Licensees

Neither the FCC nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.²⁹ According to the Census Bureau, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.³⁰ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. We note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. Also, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.³¹ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by the proposed rules, if adopted.

p. 220 MHz Radio Service—Phase I Licensees

The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. According to the FCC, there are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz

band. The FCC has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.³² According to the Census Bureau, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.³³ Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

q. 220 MHz Radio Service—Phase II Licensees

The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In its 220 MHz Third Report and Order, the FCC adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.³⁴ The FCC has defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, the FCC has defined a "very small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.³⁵ The SBA has approved these definitions.³⁶ An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.³⁷ Nine hundred and eight (908) licenses were auctioned in three different-sized geographic areas: three Nationwide licenses, 30 Regional Economic Area Group licenses, and 875 Economic Area (EA) licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business

status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the FCC announced that it was prepared to grant 654 of the Phase II licenses won at auction.³⁸

r. Private and Common Carrier Paging

The FCC has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either: (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.³⁹ At present, there are approximately 24,000 Private Carrier Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Telecommunications Industry Revenue data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.⁴⁰ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

s. Mobile Service Carriers

Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA

²⁹ 13 CFR 121.201, SIC code 4812.

³⁰ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, U/C92-S-1, Subject Series, Establishment and Firm Size, Table 5. Employment Size of Firms: 1992

³¹ 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291-295 (1997).

³² 220 MHz Third Report and Order, 12 FCC Rcd 11068-69, para. 291.

³³ See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

³⁴ See generally Public Notice "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

³⁵ Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

³⁶ 13 CFR 121.201, SIC code 4812.

³⁷ Trends in Telephone Service, Table 19.3 (February 19, 1999).

²⁹ 13 CFR 121.201, SIC code 4812.

³⁰ 1992 Census, Series U/C92-S-1, at Table 5.

³¹ FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (March 2000).

rules is that for radiotelephone (wireless) companies, and the most recent Telecommunications Industry Revenue data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services.⁴¹ Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

t. Broadband Personal Communications Service (PCS)

The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the FCC has held auctions for each block. The FCC defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁴² For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁴³ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.⁴⁴ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.⁴⁵ Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the FCC's auction rules.

u. Narrowband PCS

The FCC has auctioned nationwide and regional licenses for narrowband

⁴¹ 13 CFR 121.201, SIC code 4812; Trends in Telephone Service, Table 19.3 (February 19, 1999).

⁴² See Amendment of Parts 20 and 24 of the FCC's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap. Report and Order, FCC 96-278, WT Docket No. 96-59, paras. 57-60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); see also 47 CFR 24.720(b).

⁴³ See Amendment of Parts 20 and 24 of the FCC's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap. Report and Order, FCC 96-278, WT Docket No. 96-59, para. 60 (1996), 61 FR 33859 (Jul. 1, 1996).

⁴⁴ See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

⁴⁵ FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released Jan. 14 1997).

PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The FBI does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The FCC anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction; however, such auctions have not yet been scheduled. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this Further RFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

v. Rural Radiotelephone Service

The FCC has not adopted a definition of small entity specific to the Rural Radiotelephone Service.⁴⁶ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).⁴⁷ We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.⁴⁸ The FCC estimates that there are approximately 1,000 licensees in the Rural Radiotelephone Service. We estimate that almost all of them qualify as small entities under the SBA's definition.

w. Air-Ground Radiotelephone Service

The FCC has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.⁴⁹ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.⁵⁰ According to the FCC, there are approximately 100 licensees in the Air-Ground Radiotelephone Service. We estimate that almost all of them qualify as small under the SBA definition.

x. Specialized Mobile Radio (SMR)

The FCC awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than \$15

⁴⁶ The service is defined in § 22.99 of the FCC's Rules, 47 CFR 22.99.

⁴⁷ BETRS is defined in the FCC's Rules. See 47 CFR 22.757 adn 22.759.

⁴⁸ 13 CFR 121.201, SIC code 4812.

⁴⁹ The service is defined in the FCC's Rules. See 47 CFR 22.99.

⁵⁰ 13 CFR 121.201, SIC code 4812.

million in each of the three previous calendar years.⁵¹ In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; the FCC is seeking similar approval for 800 MHz SMR. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this Further RFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. According to the FCC, there are 60 small entities that qualified for geographic area licenses in the 900 MHz SMR band. The FCC estimates that there are 38 small or very small entities that qualified for the 800 MHz SMR's.

y. Fixed Microwave Services

Microwave services include common carrier,⁵² private-operational fixed,⁵³ and broadcast auxiliary radio services.⁵⁴ At present, the FCC estimates that there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The FCC has not yet defined a small business with respect to microwave services. For purposes of this Further RFA, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.⁵⁵ We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

⁵¹ 47 CFR 90.814(b)(1)

⁵² 47 CFR 101 *et seq.* (formerly, part 21 of the FCC's Rules).

⁵³ Persons eligible under parts 80 and 90 of the FCC's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁵⁴ Auxiliary Microwave Service is governed by part 74 of Title 47 of the FCC's Rules. See 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁵⁵ 13 CFR 121.201, SIC code 4812.

z. Offshore Radiotelephone Service

This service operates on several Ultra High Frequency TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.⁵⁶ The FCC estimates that there approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

aa. Wireless Communications Services

This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The FCC defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

ab. Cable Services or Systems

The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.⁵⁷ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.⁵⁸

The FCC has developed its own definition of a small cable system operator for purposes of rate regulation. Under the FCC's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.⁵⁹

Based on the FCC's most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.⁶⁰ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁶¹ The FCC has determined that there are 66,690,000 subscribers in the United States. Therefore, the FCC found that an operator serving fewer than 666,900 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁶² Based on available data,⁶³ the FCC found that the number of cable operators serving 669,900 subscribers or less totals 1,450. The FCC does not request or collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000. The FBI is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

These proposed amendments impose no formal reporting or recordkeeping requirements on small entities. Additionally, these amendments do not impose any other direct compliance requirements on small entities. Carriers seeking reimbursement under the CALEA Cost Recovery Regulations for their preexistent equipment will need to

cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

⁶⁰ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁶¹ 47 U.S.C. 543(m)(2).

⁶² 47 CFR 76.1403(b).

⁶³ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

demonstrate that such equipment was not "replaced" or "significantly upgraded."⁶⁴ Carriers can establish reimbursement eligibility with the records they maintain in the ordinary course of business.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The development of the proposed definitions of "replaced" and "significantly upgraded" is discussed at length in Section E, Definition Development, of this SNPRM, supra. The FBI considered and rejected as impractical both technical and accounting definitions. Having determined that CALEA's intent was best served by a definition focusing on public safety, the FBI then modified its definition to incorporate industry's suggestions submitted in response to the ANPRM and NPRM.

The FBI has concluded that these proposed amendments will not have a significant economic impact on a substantial number of small entities. These amendments are size-neutral because they involve definitions affecting telecommunications equipment, facilities, and services that are used by all carriers, regardless of their size. These definitions will benefit all telecommunications carriers because they allow carriers to make informed business decisions regarding their equipment, facilities, and services. Moreover, CALEA itself makes ample provisions for the protection of small entities which either "replace" or "significantly upgrade" their preexistent equipment by allowing these carriers to petition the FCC for relief under CALEA Section 109(b).

The FBI welcomes and encourages comments from concerned small entities on this issue.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

The FBI is not aware of any federal rules that overlap, duplicate, or conflict with the amendments proposed in this SNPRM.

List of Subjects in 28 CFR Part 100

Accounting, Law enforcement, Reporting and record keeping requirements, Telecommunications, Wiretapping and electronic surveillance.

For the reasons set out in the preamble, 28 CFR part 100 is proposed to be amended as set forth below:

⁶⁴ 28 CFR 100.16.

⁵⁶ This service is governed by subpart I of part 22 of the FCC's Rules. See 47 CFR 22.1001 through 22.1037.

⁵⁷ 13 CFR 121.201, SIC code 4812.

⁵⁸ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

⁵⁹ 47 CFR 76.901(e). The FCC developed this definition based on its determination that a small

PART 100—COST RECOVERY REGULATIONS, COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT OF 1994

1. The authority citation for 28 CFR part 100 continues to read as follows:

Authority: 47 U. S. C. 1001–1010; 28 CFR 0.85(o).

2. Section 100.11(a)(1) is revised to read as follows:

§ 100.11 Allowable costs.

(a) * * *

(1) All reasonable plant costs directly associated with the modifications performed by carriers in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section 103 of CALEA, until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modification;

* * * * *

3. Amend § 100.10 to:

a. Add a definition and examples for the term "Replaced"; and

b. Add a definition and examples for the term "Significantly upgraded or otherwise undergoes major modification" as follows:

§ 100.10 Definitions.

* * * * *

Replaced means that a telecommunications carrier substituted replacement equipment in place of preexistent equipment after technology compliant with the assistance capability requirements of 47 U.S.C. 1002 (assistance capability requirements) was reasonably available, or should have been reasonably available, for installation and deployment by a carrier at the time the substitution was made. Replacement equipment is equipment, facilities, or services, whether new or used, that a telecommunications carrier can use to provide its customers or subscribers with the ability to originate, terminate, or direct communications and is installed or deployed within the carrier's network. Preexistent equipment is equipment, facilities, or services that a telecommunications carrier can use to provide its customers or subscribers with the ability to originate, terminate, or direct communications and was installed or deployed within the carrier's network on or before January 1, 1995. Preexistent equipment that has been "replaced" is the equivalent of equipment, facilities, or services installed or deployed within a carrier's network after January 1, 1995. When replacement equipment is itself

preexistent equipment that has not been "replaced," and is substituted in place of other preexistent equipment, the replacement equipment retains its reimbursement eligibility as preexistent equipment. Otherwise, replacement equipment is the equivalent of equipment, facilities, or services installed or deployed within a carrier's network after January 1, 1995.

Example 1 (Repair of Preexistent Equipment): On January 2, 1999, a carrier repaired a switch installed or deployed within its network on or before January 1, 1995 (preexistent equipment), by replacing a worn part with a new part of identical make and functionality. The preexistent equipment remained in place and continued to provide the carrier's customers and subscribers with the ability to originate, terminate, or direct communications. The preexistent equipment was not "replaced" because it remained in place within the carrier's network. The preexistent equipment retained its reimbursement eligibility as equipment, facilities, or services installed or deployed within the carrier's network on or before January 1, 1995.

Example 2 (Impertinent Equipment): On January 2, 1995, a carrier substituted a backup power generator (new impertinent equipment) in place of an older, less efficient backup power generator which had been installed or deployed within the carrier's network on or before January 1, 1995 (old impertinent equipment). Since neither the new impertinent equipment nor the old impertinent equipment was used by the carrier to provide its customers or subscribers with the ability to originate, terminate, or direct communications, the "replaced" definition does not apply to this particular substitution.

Example 3 (Augmentation of Preexistent Equipment): On January 2, 1995, a carrier deployed a switch (new equipment) in a central office that housed a switch installed or deployed within the carrier's network on or before January 1, 1995 (preexistent equipment). Both switches had identical capabilities. The switches were used in tandem to evenly distribute the call load of the carrier's customers. The preexistent equipment was not "replaced" because there was no substitution of equipment. The preexistent equipment retained its reimbursement eligibility as equipment installed or deployed on or before January 1, 1995. The new equipment is equipment, facilities, or services installed or deployed within the carrier's network after January 1, 1995.

Example 4 (Damaged Equipment): On January 2, 1995, a carrier took a switch from its storage facility (replacement equipment) and substituted it in place of a switch that had been damaged by an electrical fire and was installed or deployed within the carrier's network on or before January 1, 1995 (preexistent equipment). The carrier decided to scrap the preexistent equipment because it was damaged beyond repair. Since the preexistent equipment is no longer installed or deployed within the carrier's network, it is no longer eligible for reimbursement under

these cost recovery regulations. The replacement equipment is the equivalent of equipment, facilities, or services installed or deployed within the carrier's network after January 1, 1995.

Example 5 (Movement of Equipment): On January 2, 1995, a carrier took a switch from its storage facility (replacement equipment) and substituted it in place of a switch that had been installed or deployed within the carrier's network on or before January 1, 1995 (preexistent equipment). The carrier then installed or deployed the preexistent equipment at a different central office to efficiently meet customer and capacity needs. The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements of 47 U.S.C. 1002 by December 31, 1999. The preexistent equipment was not "replaced." The preexistent equipment retains its reimbursement eligibility because the substitution occurred before technology compliant with the assistance capability requirements was reasonably available, or should have been reasonably available, for installation or deployment by the carrier, and it remained within the original carrier's network. The replacement equipment is the equivalent of equipment, facilities, or services installed or deployed within the carrier's network after January 1, 1995.

Example 6 (Movement of Equipment): On January 2, 2000, a carrier accepted delivery and installation of a switch from a manufacturer (replacement equipment) and substituted it in place of a switch that had been installed or deployed within the carrier's network on or before January 1, 1995 (preexistent equipment). The carrier then installed or deployed the preexistent equipment at a different central office to efficiently meet customer and capacity needs. The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements of 47 U.S.C. 1002 by December 31, 1999. The preexistent equipment was "replaced" because the substitution occurred after technology compliant with the assistance capability requirements should have been reasonably available for installation or deployment by the carrier. The preexistent equipment has the same status as equipment installed or deployed within the carrier's network after January 1, 1995. The replacement equipment is the equivalent of equipment, facilities, or services installed or deployed within the carrier's network after January 1, 1995.

Example 7 (Replacement with Preexistent Equipment): On January 2, 2000, a carrier removed a "blue type" switch that had been installed or deployed in its network on or before January 1, 1995 (preexistent equipment). The carrier then substituted the "blue type" switch (now replacement equipment) in place of a "green type" switch that had been installed or deployed on or before January 1, 1995 (preexistent

equipment). The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements of 47 U.S.C. 1002 by December 31, 1999. The "blue type" switch was not "replaced," because there was no substitution of replacement equipment in place of the "blue type" switch. Since the "blue type" switch was preexistent equipment that was not "replaced," but was substituted in place of other preexistent equipment, the "blue type" switch retained its reimbursement eligibility as preexistent equipment. The "green type" switch was "replaced" because the substitution occurred after technology compliant with the assistance capability requirements should have been reasonably available for installation or deployment by the carrier.

Example 8 (Replacement with Preexistent Equipment): On December 30, 1999, a carrier accepted delivery and installation of a "red type" switch from a manufacturer (replacement equipment) and substituted it in place of a "blue type" switch that had been installed or deployed within the carrier's network on or before January 1, 1995 (preexistent equipment). On January 2, 2000, the carrier substituted the "blue type" switch (now replacement equipment) to replace a "green type" switch that had been installed or deployed within the carrier's network on or before January 1, 1995 (preexistent equipment). The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements of 47 U.S.C. 1002 by December 31, 1999. The "blue type" switch was not "replaced." The "blue type" switch retains its reimbursement eligibility because the substitution occurred before technology compliant with the assistance capability requirements was reasonably available, or should have been reasonably available, for installation or deployment by the carrier, and it remained within the original carrier's network. The "green type" switch was "replaced" because the substitution occurred after technology compliant with the assistance capability requirements should have been reasonably available for installation or deployment by the carrier. The "red type" switch is the equivalent of equipment, facilities, or services installed or deployed within the carrier's network after January 1, 1995.

Example 9 (Sole of Equipment): On January 2, 2000, Carrier One sold a portion of its network to Carrier Two. Some of the equipment, facilities, or services sold to Carrier Two had been installed or deployed within Carrier One's network on or before January 1, 1995 (preexistent equipment). After the sale, the preexistent equipment remained in place and continued to serve the same customer areas. The preexistent equipment was not "replaced" because there was no substitution of replacement equipment in place of the preexistent equipment. The preexistent equipment, now

in Carrier Two's network, retains its reimbursement eligibility as equipment, facilities, or services installed or deployed within the carrier's network on or before January 1, 1995.

Example 10 (Sale of Equipment): On January 2, 1995, Carrier One took a switch from its storage facility (replacement equipment) and substituted it in place of a switch installed or deployed within its network on or before January 1, 1995 (preexistent equipment). Carrier One then sold the preexistent equipment to Carrier Two who installed or deployed the preexistent equipment elsewhere within its own network. Since the preexistent equipment did not remain within Carrier One's network, there is no need to determine whether it was "replaced." Carrier One's replacement equipment is the equivalent of equipment, facilities, or services installed or deployed within the carrier's network after January 1, 1995. The preexistent equipment installed or deployed in Carrier Two's network is the equivalent of equipment installed or deployed within its network after January 1, 1995.

Example 11 (Replacement of Analog Equipment with Digital Equipment): On January 2, 1999, a carrier substituted a digital switch (replacement equipment) in place of an analog switch that had been installed or deployed within the carrier's network on or before January 1, 1995 (preexistent equipment). The carrier then installed or deployed the preexistent equipment at a different central office to efficiently meet customer and capacity needs. The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements of 47 U.S.C. 1002 by December 31, 1999. The preexistent equipment was not "replaced." The preexistent equipment retains its reimbursement eligibility because the substitution occurred before technology compliant with the assistance capability requirements was reasonably available, or should have been reasonably available, for installation or deployment by the carrier, and it remained within the original carrier's network. The replacement equipment is the equivalent of equipment, facilities, or services installed or deployed within the carrier's network after January 1, 1995.

Example 12 (Replacement of Circuit-Mode Equipment with Packet-Mode Equipment): On January 2, 2000, a carrier substituted a packet-mode switch (replacement equipment) in place of a circuit-mode switch that had been installed or deployed within the carrier's network on or before January 1, 1995 (preexistent equipment). The carrier then installed or deployed the preexistent equipment at a different central office to efficiently meet customer and capacity needs. The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements of 47 U.S.C. 1002 by December

31, 1999. The preexistent equipment was "replaced" because the substitution occurred after technology compliant with the assistance capability requirements should have been reasonably available for installation or deployment by the carrier. The replacement equipment is the equivalent of equipment, facilities, or services installed or deployed within the carrier's network after January 1, 1995.

Significantly upgraded or otherwise undergoes major modification means:

(1) A telecommunications carrier has activated, added, or improved a capability, feature, or service of its preexistent equipment that:

(i) Hampers the carrier's ability to unobtrusively deliver lawfully authorized intercepted communications and/or reasonably available call-identifying information to law enforcement in accordance with the assistance capability requirements of 47 U.S.C. 1002 (assistance capability requirements), in a manner that the carrier does not correct at its own expense within a reasonable period of time; and

(ii) Occurs after technology compliant with the assistance capability requirements was reasonably available, or should have been reasonably available for installation or deployment by a carrier at the time the improvement was made; and

(iii) Was not mandated by a federal or state statute, rule, regulation, or administrative order.

(2) Preexistent equipment is equipment, facilities, or services that a telecommunications carrier can use to provide its customers or subscribers with the ability to originate, terminate, or direct communications and was installed or deployed within the carrier's network on or before January 1, 1995. Preexistent equipment that has been "significantly upgraded or otherwise undergoes major modification" is the equivalent of equipment, facilities, or services installed or deployed within a carrier's network after January 1, 1995.

Example 1 (Capacity Modifications): On January 2, 2000, a carrier added hardware and software to some of its preexistent equipment. The additions only improved the preexistent equipment's capacity to handle more calls from its customers and subscribers. The preexistent equipment was not "significantly upgraded" because the additions were related to subscriber capacity improvements and did not affect the assistance capability requirements of 47 U.S.C. 1002.

Example 2 (Modifications to Impertinent Equipment): On January 2, 2000, a carrier made modifications to a backup power generator installed or deployed in its network on or before January 1, 1995 (impertinent equipment). These modifications improved

the impertinent equipment's overall efficiency. The impertinent equipment is incapable of providing the carrier's customers or subscribers with the ability to originate, terminate, or direct communications. Thus, the impertinent equipment cannot be "significantly upgraded."

Example 3 (Packet-mode Technology Upgrade): On January 2, 1999, a carrier upgraded a portion of its network architecture from circuit-mode to packet-mode switching technology. Some of the upgraded equipment was preexistent equipment. The modifications hampered the carrier's unobtrusive delivery of intercepted communications and reasonably available call-identifying information to law enforcement. The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements by December 31, 1999. The preexistent equipment was not "significantly upgraded" because the changes were made before technology compliant with the assistance capability requirements was reasonably available, or should have been reasonably available, for installation or deployment by the carrier.

Example 4 (Packet-mode Technology Upgrade): On January 2, 2000, a carrier upgraded a portion of its network architecture from circuit-mode to packet-mode switching technology. Some of the upgraded equipment was preexistent equipment. The modifications hampered the carrier's unobtrusive delivery of intercepted communications and reasonably available call-identifying information to law enforcement. The carrier failed to correct the problem at its own expense in a reasonable period of time. The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements by December 31, 1999. The preexistent equipment was "significantly upgraded" because the changes added capabilities that hampered the delivery of intercepted communications and call-identifying information to law enforcement after technology compliant with the assistance capability requirements should have been reasonably available for installation or deployment by the carrier.

Example 5 (Non-Hampering Modifications): On January 2, 2000, a carrier installed a new generic software upgrade to some of its preexistent equipment. The software upgrade improved network efficiencies and made existing services easier for customers to use. The modifications did not add a hindrance to law enforcement's ability to receive intercepted communications and/or reasonably available call-identifying information. The preexistent equipment was not "significantly upgraded" because the upgrade did not hamper the unobtrusive delivery of intercepted communications and/or reasonably available call-identifying information to law enforcement.

Example 6 (Non-Hampering Modifications): On January 2, 2000, a carrier made changes to its equipment, facilities, or services in order to correct Y2K deficiencies. Some of the changes affected the carrier's preexistent equipment. There is no indication that the Y2K modifications had any impact on law enforcement surveillance activities. The preexistent equipment was not "significantly upgraded" because the change did not hamper the delivery of intercepted communications and/or call-identifying information to law enforcement.

Example 7 (Non-Hampering Modifications): On January 2, 2000, a carrier made changes to its preexistent equipment that required law enforcement authorities to relocate their point of intercept from the local loop to the carrier's central office. The carrier was still able to unobtrusively deliver intercepted communications and/or reasonably available call-identifying information to law enforcement in accordance with the assistance capability requirements. The preexistent equipment was not "significantly upgraded" because the change did not hamper the delivery of intercepted communications and/or call-identifying information to law enforcement.

Example 8 (Hampering Modifications): On January 2, 1995, a carrier activated the dominant call forwarding feature which was resident on some of its preexistent equipment. The call forwarding feature added a hindrance to law enforcement's ability to obtain intercepted communications and reasonably available call-identifying information. The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements by December 31, 1999. The preexistent equipment was not "significantly upgraded" because the feature was activated before technology compliant with the assistance capability requirements was reasonably available, or should have been reasonably available, for installation or deployment by the carrier.

Example 9 (Hampering Modifications): On January 2, 2000, a carrier installed a new generic software upgrade on some of its preexistent equipment. The generic software upgrade added a hindrance to law enforcement's ability to obtain intercepted communications and reasonably available call-identifying information. The carrier failed to correct the additional hindrance caused by the generic software upgrade at its own expense within a reasonable period of time. The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements by December 31, 1999. The preexistent equipment was "significantly upgraded" because the carrier installed a generic software upgrade that hampered the delivery of intercepted communications and call-identifying information to law enforcement after technology compliant with the assistance

capability requirements should have been available for installation or deployment.

Example 10 (Hampering Modifications): On January 2, 2000, a carrier added a modification to its some of its preexistent equipment. Although the modification did not affect the unobtrusive delivery of intercepted communications to law enforcement, it did intermittently garble the reasonably available call-identifying information which was being delivered to law enforcement. The carrier did not correct the problem at its own expense within a reasonable period of time. The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements by December 31, 1999. The preexistent equipment was "significantly upgraded" because the modifications hampered the delivery of call-identifying information to law enforcement after technology compliant with the assistance capability requirements should have been available for installation and deployment by the carrier and the carrier did not correct the problem at its own expense within a reasonable period of time.

Example 11 (Correction of Hampering Modifications): On January 2, 2000, a carrier added a call forwarding feature to its preexistent equipment. The carrier determined that the changes hampered the delivery of intercepted communications and reasonably available call-identifying information to law enforcement. The carrier corrected the additional hindrance caused by the call forwarding feature at its own expense within 72 hours of noticing the problem. The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements by December 31, 1999. The preexistent equipment was not "significantly upgraded" because the carrier corrected the problem at its own expense within a reasonable time.

Example 12 (Correction of Hampering Modifications): On January 2, 2000, a carrier added a call forwarding feature to its preexistent equipment. One month later, a local law enforcement agency attempted to activate a lawfully authorized electronic surveillance on the preexistent equipment. The carrier determined that the changes it made to the preexistent equipment hampered the delivery of intercepted communications and reasonably available call-identifying information to law enforcement. The carrier corrected the additional hindrance caused by the call forwarding feature at its own expense within 24 hours of being notified of the problem. The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements by December 31, 1999. The preexistent equipment was not

"significantly upgraded" because the carrier corrected the problem at its own expense within a reasonable period of time.

Example 13 (Failure to Correct Hampering Modifications): On January 2, 2000, a carrier installed a software upgrade on some of its preexistent equipment which improved the functionality of the call forwarding feature. The improved call forwarding feature added a hindrance to law enforcement's ability to obtain intercepted communications and reasonably available call-identifying information. One month later, a local law enforcement agency attempted to activate a lawfully authorized electronic surveillance on the preexistent equipment. The carrier determined that the changes it made to the preexistent equipment hampered the delivery of intercepted communications and reasonably available call-identifying information to law enforcement. The carrier failed to correct the additional hindrance caused by the improved call forwarding feature at its own expense within a reasonable period of time. The Federal Communications Commission determined in its Memorandum Opinion and Order, adopted on September 10, 1998, that manufacturers should be able to produce equipment that will be generally available for carriers to meet the assistance capability requirements by December 31, 1999. The preexistent equipment was "significantly upgraded" because the carrier failed to correct the problem at its own expense within a reasonable period of time.

Example 14 (Modifications Mandated by Federal or State Statute or Regulation): On January 2, 2000, a carrier made changes to its preexistent equipment that provided local number portability to its network and were mandated by federal statute and regulations. The preexistent equipment was not "significantly upgraded" because the changes were mandated by federal statute and regulations regardless of their effect on law enforcement's ability to intercept communications and reasonably available call-identifying information.

Example 15 (Effect of "Significant Upgrade" on Preexistent Equipment): On January 2, 2000, a carrier "significantly upgraded" some of its preexistent equipment. The preexistent equipment now has the same status as equipment, facilities, or services installed after January 1, 1995.

* * * * *

Dated: September 26, 2001.

Thomas J. Pickard,

Deputy Director, Federal Bureau of Investigation, Department of Justice.

[FR Doc. 01-24942 Filed 10-4-01; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR-036-FOR]

Arkansas Abandoned Mine Land Reclamation Plan and Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Arkansas abandoned mine land reclamation plan (Arkansas plan) and the Arkansas regulatory program (Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Arkansas proposes revisions to its abandoned mine land program regulations concerning eligible lands and water, reclamation objectives and priorities, and reclamation project evaluation. Arkansas also proposes to revise its regulatory program regulations concerning procedures for assessment conference and to add revegetation success standards for grazing land and prime farmland. Arkansas intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Arkansas plan and Arkansas program and the proposed amendments to the plan and program are available for public inspection, the comment period during which you may submit written comments on the amendment, and the procedures we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.d.t., November 5, 2001. If requested, we will hold a public hearing on the amendment on October 30, 2001. We will accept requests to speak at the hearing until 4:00 p.m., c.d.t. on October 22, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Arkansas plan and Arkansas program, the amendment, a listing of any scheduled public hearings, and all written comments received in response

to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: (918) 581-6430.

Arkansas Department of Environmental Quality, Surface Mining and Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72219, Telephone (501) 682-0809.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581-6430. Internet: mwolfrom@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Plan and the Arkansas Program

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act, (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On May 2, 1983, the Secretary of the Interior approved the Arkansas plan. You can find background information on the Arkansas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 2, 1983, **Federal Register** (48 FR 19710). You can find later actions on the Arkansas plan at 30 CFR 904.25 and 904.26.

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, " * * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these

criteria, the Secretary of the Interior conditionally approved the Arkansas program on November 21, 1980. You can find background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the November 21, 1980, **Federal Register** (45 FR 77003). You can find later actions on the Arkansas program at 30 CFR 904.10, 904.12, 904.15, and 904.16.

II. Description of the Proposed Amendment

By letter dated August 13, 2001 (Administrative Record No. AR-568), Arkansas sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Arkansas sent the amendment in response to our letters dated November 26, 1985, and October 14, 1997 (Administrative Record Nos. AR-332 and AR-559.02, respectively), that we sent to Arkansas under 30 CFR 732.17(c). The amendment also includes a change made at Arkansas' own initiative. Arkansas proposes to amend the Arkansas Surface Coal Mining and Reclamation Code. Below is a summary of the changes proposed by Arkansas. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Section 845.18 Procedures for Assessment Conference

In paragraph (a) of this section, Arkansas proposes to remove the department's old name of "Arkansas Department of Pollution Control and Ecology" and to replace it with the department's new name of "Arkansas Department of Environmental Quality."

B. Section 874.12 Eligible Lands and Water

Arkansas proposes to revise paragraph (b)(4) of this section to read as follows:

(4) Moneys allocated to the State under Section 402(g)(1) and (5) of Public Law 95-87 are available for the work.

C. Section 874.13 Reclamation Objectives and Priorities

Arkansas proposes to delete paragraph (d) of this section regarding research and demonstration projects relating to the development of surface coal mining reclamation and water quality control program methods and techniques. By deleting this paragraph, the above projects will no longer have priority as abandoned mine land reclamation projects.

D. Section 874.14 Reclamation Project Evaluation

Arkansas proposes to revise paragraph (a)(2) of this section by deleting the last sentence. The revised sentence will read as follows:

The availability of technology to accomplish the reclamation work with reasonable assurance of success.

E. Phase III Revegetation Success Standards for Grazingland

Arkansas proposes to add Phase III revegetation success standards for grazingland to its regulatory program.

F. Phase II and III Revegetation Success Standards for Prime Farmland

Arkansas proposes to add Phase II and III revegetation success standards for prime farmland to its regulatory program.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Arkansas program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. AR-036-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581-6430.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you

wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on October 22, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and because it is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal

regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 5, 2001.

Malcolm B. Ahrens,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01-25005 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 93**

[FRL-7075-6]

RIN 2060-AJ70

Transportation Conformity Rule Amendments: Minor Revision of 18-Month Requirement for Initial SIP Submissions and Addition of Grace Period for Newly Designated Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing two minor revisions to the transportation conformity rule. Transportation conformity is required by the Clean Air Act to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of a state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the state air quality plan.

Today's proposal would implement a recent Clean Air Act amendment that provides a one-year grace period before conformity is required in areas that are designated nonattainment for a given air quality standard for the first time. This Clean Air Act amendment was enacted on October 27, 2000. Today's proposal formally adds the one-year conformity grace period to the conformity rule, but the grace period can already be used by

newly designated nonattainment areas as a matter of law.

This proposal would also revise the timing for determining conformity after a State submits a control strategy implementation plan or maintenance plan for the first time (an "initial" SIP submission). The current conformity rule requires a conformity determination within 18 months of the submission of an initial SIP. The proposed rule would change this requirement, so that conformity would be required within 18 months of EPA's affirmative finding that the SIP's motor vehicle emissions budgets are adequate. EPA is proposing this revision as a result of the March 2, 1999, ruling by the U.S. Court of Appeals for the District of Columbia Circuit Court (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). The court stated that motor vehicle emissions budgets from an initial SIP submission can only be used for conformity once EPA affirmatively finds the budgets adequate. Under this approach, state and local agencies have sufficient time to redetermine conformity where initial SIPs are submitted and after EPA finds such budgets adequate. The preamble to the proposal also clarifies what is considered an initial SIP submission under the conformity rule.

DATES: Comments on this action must be received by November 5, 2001.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Attention: Docket No. A-2001-12, 1200 Pennsylvania Avenue, Mail Code 6102, Washington, DC 20460.

Materials relevant to this rulemaking are in Public Docket A-2001-12 located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in Room M-1500, Waterside Mall (ground floor). Ph: 202-260-7548. The docket is open and supporting materials are available for review between 8 a.m. and 5:30 p.m. on all federal government workdays. You may have to pay a reasonable fee for copying docket materials.

This proposal is available electronically from our web site. See **SUPPLEMENTARY INFORMATION** for information on accessing and downloading files.

FOR FURTHER INFORMATION CONTACT: Denise Kearns, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI

48105, kearns.denise@epa.gov, (734) 214-4240; or Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; patulski.meg@epa.gov; (734) 214-4842.

SUPPLEMENTARY INFORMATION: You can access and download today's proposal on your computer by going to the following address on EPA's Web site:

Internet Web Site

<http://www.epa.gov/otaq/traq> (Once at the site, click on "conformity.")

Regulated Entities

Entities potentially regulated by the transportation conformity rule are those which adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by this action include:

Category	Examples of regulated entities
Local government.	Local transportation and air quality agencies, including metropolitan planning organizations.
State government.	State transportation and air quality agencies.
Federal government.	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposal. This table lists the types of entities that EPA is aware could potentially be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102 of the transportation conformity rule. 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.

The contents of this preamble are listed in the following outline:

- I. What Is Transportation Conformity?
- II. One-year Grace Period for Newly Designated Nonattainment Areas
 - A. Background
 - B. What Are We Proposing?
 - C. How Soon Does Conformity Apply in a Newly Designated Nonattainment Area?
 - D. Why Is a One-year Grace Period Beneficial for Newly Designated Nonattainment Areas?

- III. Conformity Determinations for Initial SIP Submissions
 - A. Background
 - B. What Are We Proposing?
 - C. Why Are We Proposing This Change?
 - D. Examples: When Would an 18-Month Clock Start for an Initial SIP Submission?
- IV. How Would Today's Proposal Affect Conformity SIPs?
- V. Administrative Requirements
 - A. Executive Order 12866
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Analysis
 - D. Unfunded Mandates
 - E. National Technology Transfer and Advancement Act
 - F. Executive Order 13045
 - G. Executive Order 13084
 - H. Executive Orders on Federalism
 - I. Executive Order 13211

I. What Is Transportation Conformity?

Transportation conformity is required under section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of a state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. EPA's transportation conformity rule (40 CFR parts 51 and 93) establishes the criteria and procedures for determining whether transportation activities conform to the state air quality plan.

EPA first published the transportation conformity rule on November 24, 1993 (58 FR 62188). Minor revisions were initially made to the rule in 1995 (60 FR 40098, August 7, 1995 and 60 FR 57179, November 14, 1995), and more recently in the spring of 2000 (65 FR 18911, April 10, 2000).

On August 15, 1997, a comprehensive set of amendments was published that clarified and streamlined language from the 1993 transportation conformity rule (62 FR 43780). However, several provisions from the 1997 rulemaking were affected by the U.S. Court of Appeals for the District of Columbia Circuit in a decision made on March 2, 1999 (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). Today's proposal addresses the impact of the March 2, 1999, court decision on one provision of the conformity rule. In addition to today's action, we are preparing a future proposal that will further amend the 1997 conformity rule based on the remaining issues addressed by the court's March 2, 1999, decision.

In the interim, areas where conformity applies are currently operating under

administrative guidance that EPA and the U.S. Department of Transportation (DOT) issued to address the provisions directly affected by the court decision [May 14, 1999, Memorandum from Gay MacGregor, then-Director of the Regional and State Programs Division of EPA's Office of Transportation and Air Quality, to Regional Air Division Directors, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision;" and June 18, 1999, Memorandum from Kenneth R. Wykle, then-Administrator, Federal Highway Administration (FHWA), and Gordon J. Linton, then-Administrator, Federal Transit Administration (FTA), to FHWA Division Administrators, Federal Lands Highway Division Engineers, and FTA Regional Administrators, "Additional Supplemental Guidance for the Implementation of the Circuit Court Decision Affecting Transportation Conformity"]. See EPA's web site listed in the SUPPLEMENTARY INFORMATION section to download an electronic version of any of these memoranda.

II. One-year Grace Period for Newly Designated Nonattainment Areas

A. Background

Newly designated nonattainment areas are any geographic areas or portions of such areas which EPA designates as nonattainment for the first time for a given air quality standard. EPA designates an area as "nonattainment" when its air quality violates the national ambient air quality standards (NAAQS) set by EPA to protect public health. EPA designates areas nonattainment through the **Federal Register**. Nonattainment areas that are reclassified (or "bumped up") to a higher classification of nonattainment for a given standard are not considered newly designated nonattainment areas. An area that is redesignated from nonattainment to attainment (i.e., becomes a maintenance area) is not considered a newly designated nonattainment area. Finally, a maintenance area that is redesignated from attainment to nonattainment is also not considered a newly designated nonattainment area for the purposes of this proposal.

Areas can be designated nonattainment for more than one air quality standard. For example, if an area is currently designated as a carbon monoxide nonattainment area but now has monitoring data which show that it is violating an ozone standard, the area would be considered a newly designated nonattainment area for ozone

once EPA's final ozone nonattainment designation is effective.

In the November 1995 conformity rule, EPA gave newly designated nonattainment areas a one-year grace period before conformity applied for a given standard (§ 93.102(d) of the November 14, 1995 final rule, 60 FR 57179). However, this provision was challenged by the Sierra Club, and the U.S. Court of Appeals for the District of Columbia Circuit overturned the grace period on November 4, 1997 (*Sierra Club v. EPA, et al.*, 129 F.3d 137, D.C. Cir. 1997). The court concluded that the Clean Air Act in effect at that time did not provide such a grace period. In compliance with the court's decision, EPA deleted § 93.102(d) in a final rule published on April 10, 2000 (65 FR 18911).

However, on October 27, 2000, an amendment to the Clean Air Act was enacted providing for the one-year grace period for conformity in newly designated nonattainment areas, effective immediately [42 U.S.C. 7506(c)(6)].

B. What Are We Proposing?

As a result of Congress' action, EPA is proposing to add the one-year conformity grace period for newly designated nonattainment areas for a given air quality standard to the transportation conformity rule. We are proposing this change to make the transportation conformity rule consistent with the amended Clean Air Act.

C. How Soon Does Conformity Apply in a Newly Designated Nonattainment Area?

Under the current Clean Air Act as amended in October 2000, conformity applies one year after EPA first designates an area or portion of an area nonattainment for a given air quality standard. More specifically, conformity applies one year after the effective date of EPA's final nonattainment designation, as published in the **Federal Register**.

Therefore, one year after the effective date of EPA's designation of an area to nonattainment for a given standard, a conforming transportation plan and transportation improvement program (TIP) must be in place in order to fund or approve transportation projects, or the area will be in a conformity lapse.

In the absence of a conforming transportation plan and TIP, no new project-level conformity determinations may be made. According to existing guidance, exempt projects listed in § 93.126, projects listed in § 93.127, and projects that have received final funding

commitments or approvals from the FHWA or FTA can proceed toward implementation. Transportation control measures (TCMs) that EPA has approved into a SIP can also proceed during a conformity lapse. TCMs are projects which support air quality goals by reducing travel or affecting congestion. A new conformity determination for the transportation plan and TIP based on all pollutants that apply is necessary to end the conformity lapse.

The transportation plan and TIP must conform with respect to all pollutants for which the area is designated nonattainment. Transportation conformity applies in areas that are designated nonattainment for an ozone standard, carbon monoxide, particulate matter, and nitrogen dioxide criteria pollutants. For example, a carbon monoxide nonattainment area which is subsequently designated nonattainment for ozone has a one-year grace period before conformity determinations must be made for ozone; conformity would continue to apply in the interim for CO. By the end of the one-year grace period, a transportation plan and TIP conformity determination must be in place for all pollutants in a given area, in this case, for carbon monoxide and ozone.

D. Why Is a One-year Grace Period Beneficial for Newly Designated Nonattainment Areas?

Although there are opportunities for newly designated areas to prepare for the conformity process prior to the effective date of a nonattainment designation, areas with little or no conformity experience will find a one-year grace period beneficial. The grace period will provide these areas with additional time to evaluate their long range transportation plans, TIPs, and projects, and to complete the conformity process.

III. Conformity Determinations for Initial SIP Submissions

A. Background

Under § 93.104(e)(2) of the current conformity rule, a new conformity determination for the transportation plan and TIP is required no later than 18 months after the date that a State submits for the first time a SIP (i.e., an initial SIP submission) that establishes motor vehicle emissions budgets. This provision was created in the November 14, 1995, final rule (60 FR 57179) and August 15, 1997, final rule (62 FR 43780) amending the conformity requirement. See these final rules and the proposals (60 FR 44790, August 29,

1995, and 61 FR 36111, July 9, 1996) for more background information.

An initial SIP submission is a control strategy SIP (i.e., a reasonable further progress or attainment demonstration SIP) or a maintenance plan that is submitted for the first time to address a specific Clean Air Act requirement and includes budgets that can be used for conformity purposes. A revision to an existing approved SIP for a certain Clean Air Act requirement is not considered an initial SIP submission and therefore would not start a new 18-month clock under § 93.104(e)(2).

Under the current conformity rule, if conformity is not determined within 18 months of an initial SIP submission, the conformity status of the transportation plan and TIP lapse. See Section II.C. of this proposal for more information of which projects can proceed during a lapse. A new conformity determination based on the initial SIP's budgets that EPA has found adequate and any other adequate budgets is necessary to avoid or end a conformity lapse.

There may be limited cases where an initial SIP is submitted, EPA finds its budgets adequate, but then the state submits a revision to the initial SIP with budgets that EPA also finds adequate. In this case, if conformity has not yet been determined to the budgets in the first submission, the conformity determination to satisfy the 18-month clock must be demonstrated to the budgets in the revised SIP. The budgets in the previous SIP submission would no longer apply for conformity purposes, since EPA has found the new budgets adequate.

As stated in the preamble to the August 29, 1995 proposal (60 FR 44792), "[t]he 18-month time period for determining conformity would not be affected by subsequent changes to the submitted control strategy SIP. For example, if within the 18-month period the initial submission is revised before conformity has been determined, the 18-month clock would not be restarted. However, when conformity is eventually determined, the relevant motor vehicle emissions budgets must be used. If conformity to the initial submission has been demonstrated and that submission is subsequently revised, no 18-month clock would be started, until, as required in (§ 93.104(e)(3)), the SIP is approved by EPA."

B. What Are We Proposing?

EPA is proposing a minor revision to § 93.104(e)(2) to ensure that transportation planners have sufficient time to consider new air quality information in the transportation planning process, so that the goals of air

quality plans are achieved. EPA proposes to change the trigger point or starting point of the requirement to determine conformity from within 18 months of an initial SIP submission to within 18 months of the effective date of the **Federal Register** notice announcing EPA's finding that the budgets in an initial SIP submission are adequate. The net effect is that areas will have the full 18 months to satisfy the conformity requirement for initial submissions. See Section III.D. for examples of how today's proposal would be implemented.

Today's proposal does not change the current requirement to redetermine conformity for each initial SIP that is submitted for a given pollutant, standard, and Clean Air Act requirement. For example, an 18-month conformity clock would still be started for the first attainment demonstration for a given pollutant and standard that an area submits and EPA finds adequate. Other conformity determinations would be triggered by the first rate-of-progress SIP or maintenance plan that is submitted and found adequate for each standard that applies. Today's proposal changes only the date on which these 18-month clocks begin to run. As previously discussed, if an area revises its initial SIP submission and EPA finds the revised budgets adequate before § 93.104(e)(2) is satisfied, then the conformity determination would be based on the budgets in the most recent submission found to be adequate.

Finally, today's proposal does not change the current rule's requirement that an area need only satisfy the 18-month requirement to determine conformity to an initial SIP submission once for a given Clean Air Act requirement. Once § 93.104(e)(2) is satisfied, EPA believes that it does not have to be satisfied again for subsequent submissions of the same type prior to EPA SIP approval. EPA required the 18-month conformity determination clock to introduce new air quality data into the conformity process quickly. Once this has been done, it would be unreasonable to require further determinations where SIP submissions are revised. A new 18-month clock also starts when EPA approves each control strategy SIP revision and maintenance plan which establishes or revises a motor vehicle emissions budget, according to § 93.104(e)(3) of the transportation conformity rule. EPA believes that this requirement, along with other transportation planning and conformity requirements, provides a sufficient opportunity for periodically

introducing new air quality information into the conformity process.

C. Why Are We Proposing This Change?

The proposal would ensure that all areas have the full 18 months from the time motor vehicle emissions budgets become adequate to make transportation plan and TIP conformity determinations to initial SIP submissions, which is not the case under the current conformity rule.

In the 1997 conformity rule (40 CFR 93.118(e)(1)), areas could use the motor vehicle emissions budgets from an initially submitted SIP for conformity 45 days after we received the SIP, unless EPA declared the budgets inadequate for conformity purposes. On March 2, 1999, the U.S. Court of Appeals for the D.C. Circuit issued a decision on a challenge to the 1997 transportation conformity rule (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). The court ruled that SIP budgets cannot be used for conformity until EPA affirmatively finds those budgets adequate.

In response to the court's decision, EPA issued guidance regarding the process that is used to review the adequacy of budgets for conformity purposes. The process described in this guidance has been in effect since shortly after the court's March 2, 1999, ruling (May 14, 1999, EPA memorandum from Gay MacGregor, then-Director of the Regional and State Programs Division in the Office of Transportation and Air Quality, to Regional Air Division Directors, "Conformity Guidance on Implementation of March 2, 1999, Court Decision").

Today's action would align the conformity rule with EPA's existing guidance and with the March 2, 1999, conformity court decision. Requiring conformity following the effective date of EPA's adequacy finding on the budgets, instead of the date that an initial SIP is submitted, ensures that new information is incorporated in a timely and reasonable manner.

As described in the May 14, 1999, memorandum, EPA's current adequacy process starts when a new SIP is submitted and ends with the effective date of our adequacy finding, which we formally announce through a **Federal Register** notice. EPA tries to complete an adequacy review in approximately three months, although in some cases additional time is needed.

Areas cannot begin the process of determining conformity using the submitted budgets with certainty until EPA has determined that the budgets are adequate. Under our current conformity rule and the court decision, a

conformity determination cannot be made until budgets are found adequate, and therefore, transportation agencies may not want to invest time and resources completing a regional emissions analysis and conformity determination prior to knowing which SIP budgets apply. As a result, under the current rule, areas have a maximum of 15 months to determine conformity following an initial SIP submission (i.e., the 18-month conformity clock for initial submissions minus the three months minimally required for EPA to determine adequacy). Where adequacy review is complex and subsequently delayed, areas may have even less time to determine conformity under the current rule. As a practical matter, if budgets cannot be used until EPA completes its adequacy review and the finding becomes effective, the 18-month clock for conformity should not start until that time. EPA believes it is more equitable for areas to have the full 18 months to complete conformity determinations.

There can also be situations where EPA finds submitted budgets adequate, but later finds them inadequate because new information has become available that affects the adequacy of the budgets. In these situations, conformity implementers may try in good faith to determine conformity to adequate budgets in an initial SIP submission within 18 months, only to have the budgets found inadequate before a conformity determination is made.

To address the situations described above and based on our experience in implementing conformity to date, EPA continues to believe that areas should have the full 18 months to determine conformity. An 18-month period provides areas with the time needed to assess new information contained in a SIP. We continue to encourage air quality and transportation planners to coordinate their processes so that new air quality plans can be used expeditiously in the transportation conformity and planning processes.

Finally, today's proposal does not weaken the conformity rule provisions or the SIP process. For example, EPA considered whether starting the 18-month clock from adequacy (rather than from the state's submission of the SIP) would result in SIPs being submitted with inadequate budgets.

EPA does not believe that this situation would be encouraged by today's proposal. There are many other considerations, aside from the conformity process, that are in place to encourage the development of SIPs that can be approved with adequate budgets. Due to the significant level of state and

local government resources that are involved in developing a SIP that meets Clean Air Act requirements, it is unlikely that a state or area would choose to submit a SIP with inadequate budgets simply to avoid an 18-month conformity clock from starting for an initial SIP submission.

D. Examples: When Would an 18-Month Clock Start for an Initial SIP Submission?

The following examples help illustrate what types of situations trigger or do not trigger the 18-month conformity requirement for initial SIP submissions. There could be other cases that are not described here but could be implemented under this proposal.

How would this proposal affect areas where an 18-month clock is currently running? In areas where an 18-month clock for an initial submission has already started and has not yet been satisfied, this proposed change would alter those clocks. In these areas, EPA proposes that a new 18-month clock would be started on the effective date of EPA's positive adequacy finding for budgets contained in an initial SIP submission. If EPA has already found budgets in the initial SIP submission adequate and conformity has not been determined to these budgets, the new 18-month clock would begin on the effective date of EPA's affirmative adequacy finding. An 18-month clock would not yet be started if EPA is still reviewing budgets for adequacy, or if EPA subsequently finds submitted budgets inadequate.

For example, suppose an area submitted its first attainment demonstration 15 months ago. EPA found the budgets in the attainment demonstration adequate, and our finding was effective five months after submission. A conformity determination on the transportation plan and TIP has yet to be made. Under our current rule, the area would have only three more months to do conformity (i.e., the current rule requires conformity to be determined 18 months after submission, and it has been 15 months since the SIP was submitted). In contrast, under today's proposal, the area would still have eight months to determine conformity to the budgets in the initial SIP (i.e., the clock would start on the effective date of EPA's adequacy finding which happened 10 months ago).

Is a new conformity determination triggered if EPA finds the budgets inadequate during its adequacy review? No, if EPA finds budgets inadequate, the 18-month clock for a conformity determination would not be triggered. Inadequate budgets cannot be used for

conformity determinations, and the requirement to conduct a determination is only triggered by budgets that can be used for conformity. An 18-month conformity clock would be triggered in the future if a new SIP is submitted for the same Clean Air Act requirement and EPA finds its budgets adequate. This new SIP would be considered an initial submission since the prior SIP's budgets were found inadequate.

What happens if EPA finds the budgets adequate but later finds them inadequate? There have been limited cases where EPA finds the budgets adequate during our initial adequacy review, but EPA later reverses its decision because of new information that indicates that the budgets are in fact inadequate.

In such a case under the current rule and under this proposal, if a conformity determination had been approved by the metropolitan planning organization (MPO) and the Department of Transportation (DOT) before the effective date of the **Federal Register** notice announcing EPA's subsequent finding that the budgets are inadequate, the requirement to determine conformity within 18 months of the initial attainment demonstration would be satisfied. The conformity determination for the transportation plan and TIP would continue to remain valid, pursuant to § 93.118(e)(3) of the current conformity rule and this proposal. In this particular case, a new 18-month conformity clock for an initial submission would not start if the state subsequently makes a new initial SIP submission containing budgets that EPA also finds adequate. A new 18-month clock would not start in this situation because the conformity requirement for initial submissions only needs to be satisfied once for a specific Clean Air Act requirement.

However, if the MPO and DOT had not determined conformity to the submitted budgets before EPA found the budgets inadequate, the requirement to determine conformity within 18 months of an initial SIP submission under § 93.104(e)(2) would not be satisfied. In this situation, EPA is proposing that an 18-month clock would start when the state makes a new initial SIP submission and EPA finds its budgets adequate for conformity purposes. Transportation agencies would have a new 18-month time period to determine conformity once the new budgets are in place.

In certain ozone areas, is a new 18-month conformity clock started when EPA finds budgets adequate that are submitted to reflect additional control measures or MOBILE6 estimates of Tier 2 vehicle and fuel standards? No, EPA

has already stated that these SIP revisions are not initial SIP submissions that start 18-month clocks under § 93.104(e)(2).¹ EPA addressed this question in the July 28, 2000, supplemental notice of proposed rulemaking (65 FR 46386) for certain ozone nonattainment areas.

IV. How Would Today's Proposal Affect Conformity SIPs?

Clean Air Act section 176(c)(4)(C) requires states to submit revisions to their SIPs to reflect the criteria and procedures for determining conformity.

Section 51.390(b) of the conformity rule specifies that after EPA approves a conformity SIP revision, the federal conformity rule no longer governs conformity determinations (for the parts of the rule that are covered by the approved conformity SIP). In some areas, EPA has already approved conformity SIPs which include § 93.104(e)(2) from the 1997 transportation conformity rule. In these areas, the final rule amendment that changes this requirement as described in today's proposal will be effective only when this amendment is included in a conformity SIP revision and EPA approves that SIP revision. EPA will work with states to approve such revisions as expeditiously as possible through flexible administrative techniques such as parallel processing and direct final rulemaking.

In contrast, the one-year conformity grace period applies as a statutory matter for all newly designated nonattainment areas, including areas that have EPA-approved conformity SIPs, since this grace period is already required as a matter of law.

V. Administrative Requirements

A. Executive Order 12866

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

(1) Have an annual effect on the economy of \$100 million or more, or otherwise 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;

(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.

It has been determined that this proposal is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This proposal does not impose any new information collection requirements from EPA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* 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.

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.

C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires the agency to conduct a regulatory flexibility analysis of any significant impact a rule will have on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions.

EPA has determined that today's proposed rule will not have a significant impact on a substantial number of small entities. This regulation directly affects federal agencies and metropolitan

planning organizations, which by definition are designated only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities. The Regulatory Flexibility Act defines a "small governmental jurisdiction" as the government of a city, county, town, school district or special district with a population of less than 50,000.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation 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.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in

¹ In this answer, EPA is assuming that the original attainment budgets that included interim MOBILE5-based Tier 2 estimates were adequate and approved as part of the attainment demonstration. If the original MOBILE5-based budgets were found inadequate prior to being used in a conformity determination, then the MOBILE6 budgets would be considered an initial submission that starts an 18-month clock under § 93.104(e)(2).

expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. These rule amendments simplify the conformity rule and make it more practicable to implement and are being promulgated to formalize what the court and Congress have already decided as a legal matter. They do not impose any additional burdens. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

E. National Technology Transfer and Advancement Act

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

This rulemaking does not involve technical standards. Therefore, the use of voluntary consensus standards does not apply to this proposed rule.

F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposal is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and does not require the consideration of relative environmental health or safety risks.

G. Executive Order 13084

On January 1, 2001, EO13084 was superseded by EO13175. However, this proposed rule was developed during the period when EO13084 was still in force, and so tribal considerations were addressed under EO13084.

Development of the final rule will address tribal considerations under EO13175. Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The Clean Air Act requires conformity to apply in nonattainment and maintenance areas, and today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any requirements on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

H. Executive Orders on Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have

"substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's Prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule, which amends a regulation that is required by statute, will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in nonattainment and maintenance areas, and the U.S. Court of Appeals for the District of Columbia Circuit directed EPA to find the motor vehicle emissions budgets contained in a SIP affirmatively adequate before the budgets can be used in conformity determinations. To effectively implement the court's directive on this matter, we believe it is necessary to modify the timing of when one of our existing frequency requirements for conformity is required. The rule also

would provide newly designated nonattainment areas with a one-year grace period before conformity becomes applicable, as required by a recent amendment to the Clean Air Act.

In summary, this proposed rule is required by statute and the court's interpretation of the statute, and by itself will not have substantial impact on States. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

I. Executive Order 13211

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

List of Subjects in 40 CFR Part 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: September 28, 2001.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, 40 CFR part 93 is proposed to be amended as follows:

PART 93—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

2. Section 93.102 is amended by adding paragraph (d) to read as follows:

§ 93.102 Applicability.

* * * * *

(d) *Grace period for new nonattainment areas.* For areas or portions of areas which have been designated attainment or not designated for any standard for ozone, CO, PM₁₀ or NO₂ since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any standard for any of these pollutants, the provisions of this subpart shall not apply for 12 months following the effective date of final designation to nonattainment for each standard for such pollutant.

3. § 93.104 is amended by revising paragraph (e)(2) to read as follows:

§ 93.104 Frequency of conformity determinations.

* * * * *

(e) * * *

(2) The effective date of EPA's finding that motor vehicle emissions budgets from an initially submitted control strategy implementation plan or maintenance plan are adequate pursuant to § 93.118 and can be used for transportation conformity purposes;

* * * * *

[FR Doc. 01-25017 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH-FRL-7076-2]

RIN 2040-AB75

National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: Today's action announces the availability of three reports and recommendations on the science, cost of compliance, and benefits analyses in support of a rule on arsenic in drinking water. These reports were prepared by panels convened by the National Academy of Sciences, the National Drinking Water Advisory Council, and the EPA Science Advisory Board. The establishment and operation of each of these independent, expert panels was described in a July 19, 2001, **Federal Register** proposed rule. The July 19 proposal also requested comment on whether data and analyses support setting the enforceable arsenic drinking water standard, or Maximum Contaminant Level (MCL), at 3 micrograms per liter (ug/L) (the feasible level), 5 ug/L (the level proposed in June 2000), 10 ug/L (the level published in the January 2001 rule), 20 ug/L, or some other level. The availability of these three reports allows commenters to consider this information in preparing their comments on the July 19, 2001, proposal, and to comment on the data, analyses, and conclusions that EPA should consider.

DATES: Comments must be in writing and either postmarked or received by EPA's Water Docket by October 31, 2001.

ADDRESSES: EPA accepts comments by three delivery methods:

(1) Mailed to the W-99-16-VI Arsenic Comments Clerk, Water Docket (MC-4101); U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(2) Hand delivered (e.g., courier or overnight delivery service) to EPA's Water Docket, located at 401 M Street, SW; East Tower Basement Room 57, in Washington, DC; between 9 a.m. and 3:30 p.m. Eastern Daylight Time, Monday through Friday, except holidays.

(3) Electronically sent to ow-arsenic-docket@epa.gov. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing and docket review.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, phone: (800) 426-4791 or (703) 412-3330, e-mail: hotline-sdwa@epa.gov for general information, meeting information, and copies of arsenic regulations and support documents. For other inquiries, contact Richard Reding, (202) 260-4441, e-mail: reding.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

Additional Information for Commenters

No facsimiles (faxes), compressed or zipped files will be accepted, and comments must be submitted in writing. Please submit an original and three copies of your comments and enclosures (including references) and identify your submission by the docket number W-99-16-VI. To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that comments cite, where possible, the question(s) or sections and page numbers in the document or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

EPA uses WordPerfect as its standard software, so electronic attachments (including 3.5 inch floppy disks) must be identified as docket submissions for W-99-16-VI and submitted in WordPerfect 8 (or older version) or ASCII file format (unless four hard copies are also submitted). Comments attached in other electronic formats (e.g., Word, pdf, Excel, and compressed or zipped files) must also be submitted as hard copies. If you submit your comment both electronically and as a hard copy, please note this on both submissions so the Docket can link your submissions as one comment rather than two separate comments. Electronic comments on this document may be filed online at many Federal Depository Libraries.

There is no need to submit a comment to repeat views stated in previous comments, or if you do not have

additional data relevant to these three reports. The Agency does not send out individual replies to respond to those who submit comments.

Availability of Docket

For an appointment to review the docket for this rulemaking, call (202) 260-3027 between 9 a.m. and 3:30 p.m. Eastern Daylight Time, Monday through Friday and refer to Docket W-99-16-VI. Every user is entitled to 100 free pages, and after that the Docket charges 15 cents a page. Users are invoiced after they copy \$25, which is 267 photocopied pages. The Safe Drinking Water Hotline can provide some hard copies of some of the supporting documentation and some electronically (phone: (800) 426-4791 or (703) 412-3330, e-mail: hotline-sdwa@epa.gov). EPA's arsenic-in-drinking-water web page contains links to the arsenic **Federal Register** documents and other supporting material at www.epa.gov/safewater/arsenic.html.

I. Background

In the Monday, January 22, 2001, **Federal Register** (US EPA 2001a), EPA issued regulations revising the arsenic drinking water standard and clarifying compliance and new-source contaminants monitoring provisions (66 FR 6976). The Agency established a health-based, non-enforceable Maximum Contaminant Level Goal (MCLG) for arsenic of zero milligrams per liter (mg/L) in § 141.15(b) and an enforceable Maximum Contaminant Level (MCL) for arsenic of 0.01 mg/L (i.e., 10 micrograms per liter (µg/L)) for both community water systems (CWSs) and non-transient non-community water systems (NTNCWSs) in § 141.62(b)(16). (Although EPA lists drinking water standards in Title 40 of the Code of Federal Regulations (40 CFR) in units of mg/L, the Agency will refer to arsenic concentrations in µg/L in this notice.)

The Agency issued a final rule (US EPA 2001b) on May 22, 2001 (66 FR 28342), to delay the effective date of the January 2001 arsenic rule until February 22, 2002. The purpose of the delayed effective date was to allow the Agency to conduct additional reviews of the arsenic rule, including the three reviews that are the subject of today's notice, and to provide opportunities for additional public comment prior to a final decision about the MCL.

II. Where May I Obtain Copies of the Three Expert Panel Reports?

A. The National Academy of Sciences' (NAS) National Research Council's (NRC) Report

NAS has published the NRC the health science review report, "Arsenic in Drinking Water: 2001 Update" (NRC 2001) which is available for review or purchase on the National Academy Press web site: www.nap.edu/catalog/10194.html. The 2001 NRC report reviewed and analyzed relevant toxicological and health-effects studies published since the 1999 NRC report on arsenic as well as the analysis performed by EPA in support of the January 2001 rule.

B. National Drinking Water Advisory Council (NDWAC) Report

The NDWAC has submitted the cost review report, dated August 14, 2001, "Report of the Arsenic Cost Working Group to the National Drinking Water Advisory Council" (US EPA 2001e), at www.epa.gov/safewater/ars/ndwac-arsenic-report.pdf, with a cover letter to Administrator Christine Todd Whitman (US EPA 2001d, www.epa.gov/safewater/ars/ndwac-aug2001letter.html). The NDWAC reviewed the cost of compliance estimates by EPA and other organizations for various public water systems sizes, as well as the national aggregate cost estimates associated with the January 2001 arsenic rule. The cover letter identifies the text of the Working Group Report revised by the full Council and includes an additional recommendation.

C. The Science Advisory Board (SAB) Report

The SAB and its Arsenic Rule Benefits Review Panel has submitted to Administrator Whitman the benefits review report, "Arsenic Rule Benefits Analysis: An SAB Review" (EPA 2001f). This report is available at www.epa.gov/sab/ec01008.pdf. The SAB reviewed the Agency's analysis of quantified and unquantified benefits associated with the January 2001 arsenic rule.

The EPA arsenic webpage, www.epa.gov/safewater/arsenic.html, provides a link to each of these web addresses. Copies of the three reports may be viewed in the docket for this notice at the address and during the times noted in the Supplementary Information section of today's document.

III. How Will EPA Make Use of the Recommendations of the Three Expert Panels?

In the July 19 preamble (US EPA 2001d, 66 FR 37617 at 37628), EPA discussed making the findings of the expert review panels publicly available prior to the fall notice. Today's action allows the public to review the recommendations of each expert panel at the same time that the Agency is assessing the reports. Because these are final reports from independent expert panels, today's notice does not request editorial or technical changes to the reports. If you have technical comments on the analyses and conclusions of these reports that you believe EPA should consider, please submit data and your analyses to the Agency during the comment period for this document.

IV. References

- NRC. 2001. Arsenic in Drinking Water: 2001 Update. National Academy Press, 2101 Constitution Avenue, NW, Lockbox 285, Washington, DC 20055, and at www.nap.edu/books/0309076293/html.
- US EPA. 2001a. National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring; Final Rule. **Federal Register**. Vol. 66, No. 14, p. 6976. EPA 815-Z-01-001. January 22, 2001. Available at www.epa.gov/safewater/arsenic.html.
- US EPA. 2001b. National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring; Final rule; delay of effective date. **Federal Register**. Vol. 66, No. 99, p. 28342. May 22, 2001. Available at www.epa.gov/safewater/arsenic.html.
- US EPA. 2001c. National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring. **Federal Register**. Vol. 66, No. 139, p. 37617. July 19, 2001. Available at www.epa.gov/safewater/arsenic.html.
- US EPA. 2001d. Letter from Janet Pawlukiewicz to the Administrator. Transmits the National Drinking Water Advisory Council Arsenic Report. August 23, 2001. Available at www.epa.gov/safewater/arsenic.html.
- US EPA. 2001e. Final Report of the Arsenic Cost Working Group of the National Drinking Water Advisory Council. August 14, 2001. Water Resource Center (RC-4100). US EPA, 1200 Pennsylvania Avenue NW., Washington DC 20460, and at www.epa.gov/safewater/arsenic.html.
- US EPA. 2001f. Arsenic Rule Benefits Analysis: An SAB Review. EPA-SAB-EC-01-008. August 30, 2001. US EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001, and at www.epa.gov/safewater/arsenic.html.
- Authority: 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-6, 300j-4, 300j-9, and 300j-11.

Dated: October 2, 2001.

Diane C. Regas,

Acting Assistant Administrator for Water.

[FR Doc. 01-25047 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL-7071-3]

Hawaii: Tentative Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of tentative determination on application of State of Hawaii for final approval, public hearing and public comment period.

SUMMARY: The State of Hawaii has applied for approval of its underground storage tank program for petroleum and hazardous substances under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Hawaii application and has made the tentative decision that Hawaii's underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. The Hawaii application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application, unless insufficient public interest is expressed.

DATES: A public hearing is scheduled for November 13, 2001, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by November 5, 2001. EPA will determine by November 9, 2001, whether there is sufficient interest to hold the public hearing. The State of Hawaii will participate in the public hearing held by EPA on this subject. Written comments on the Hawaii application, as well as requests to present oral testimony, must be received by the close of business on November 5, 2001.

ADDRESSES: Copies of the Hawaii application are available at the following addresses for inspection and copying:

U.S. EPA Region 9, Library, 13th Floor, 75 Hawthorne Street, San Francisco, California 94105, Phone: (415) 744-1510, 9 am through 4 pm,

Pacific Daylight Savings Time; U.S. EPA Region 9 Pacific Islands Contact Office (PICO), 300 Ala Moana Blvd., Room 5-152, Honolulu, HI 96850, Phone number: (808) 541-2721, 7 am through 3:30 pm, Hawaii Standard Time; Hawaii Department of Health (HDOH), Solid and Hazardous Waste Branch, 919 Ala Moana Boulevard, Room 212, Honolulu, Hawaii 96814, Phone: (808) 586-4226, 8 am through 4 pm, Hawaii Standard Time; HDOH, Environmental Management Division, 79-7595 Haukapila Street, Kealahou, HI 96750, Phone number: (808) 322-7011, 8 am through 4 pm, Hawaii Standard Time; HDOH, Environmental Health Facility, 1582 Kamehameha Avenue, Hilo, HI 96720, Phone number: (808) 933-0917, 8 am through 4 pm, Hawaii Standard Time; HDOH, Maui District Health Office, 54 High Street, Wailuku, HI 96793, Phone number: (808) 984-8230, 8 am through 4 pm, Hawaii Standard Time; HDOH, Kauai District Health Office, 3040 Umi Street, Lihue, HI 96766, Phone number: (808) 241-3323, 8 am through 4 pm, Hawaii Standard Time; or U.S. EPA Docket Clerk, Office of Underground Storage Tanks, c/o RCRA Information Center, 1235 Jefferson Davis Highway, Arlington, Virginia 22202, Phone: (703) 603-9231, 9 am through 5 pm, Eastern Daylight Savings Time.

Written comments should be sent to Ms. April Katsura of the Underground Storage Tank Program Office, U.S. EPA Region 9, Mail Code WST-8, 75 Hawthorne Street, San Francisco, California 94105.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of Hawaii's application for program approval on November 13, 2001 at 6 p.m., Hawaii Standard Time, at the Kawanakoa Middle School, 49 Funchal Street, Honolulu, Hawaii 96813, Phone: (808) 587-4430. Anyone who wishes to learn whether or not the public hearing on the State's application has been canceled should telephone one of the following contacts on or before November 9, 2001:

Ms. April Katsura of the Underground Storage Tank Program Office, U.S. EPA Region 9, Mail Code WST-8, 75 Hawthorne Street, San Francisco, California 94105, Phone: (415) 744-2024; or

Mr. Steven Y.K. Chang, P.E., Manager, Solid and Hazardous Waste Branch, Hawaii Department of Health, 919 Ala Moana Boulevard, Room 212, Honolulu, Hawaii, 96814, Phone: (808) 586-4226.

FOR FURTHER INFORMATION, CONTACT: Ms. April Katsura of the Underground Storage Tank Program Office, U.S. EPA

Region 9, Mail Code WST-8, 75 Hawthorne Street, San Francisco, California 94105, Phone: (415) 744-2024.

SUPPLEMENTARY INFORMATION:

I. Why Are State Programs Approved?

Section 9004 of RCRA, 42 U.S.C. 6991c, authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program, subject to the authority retained by EPA in accordance with RCRA. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program: (1) Is "no less stringent" than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); (2) includes the notification requirements of RCRA section 9004(a)(8); and (3) provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (on information-gathering) and 9006 (on federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogues to these provisions.

II. What Has EPA Tentatively Decided With Respect to Hawaii's Application for Program Approval?

EPA has reviewed the Hawaii application, and has tentatively determined that the State's UST program for petroleum and hazardous substances meets all of the requirements necessary to qualify for final approval.

The State of Hawaii submitted its draft state program approval application to EPA by letter dated February 23, 2000. After reviewing the package, EPA submitted comments to the State for review. Hawaii submitted its complete state program approval application for EPA's tentative approval on May 23, 2001.

On January 12, 2000, Hawaii adopted UST program regulations for petroleum and hazardous substance underground storage tanks. These regulations became effective on January 28, 2000. Prior to the adoption of the regulations, Hawaii

solicited public comment and held a public hearing on the draft UST program regulations.

EPA will hold a public hearing on its tentative decision on November 13, 2001, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until November 5, 2001. Copies of the Hawaii application are available for inspection and copying at the locations indicated in the addresses section of this document.

EPA will consider all public comments on its tentative determination received at the hearing, or received in writing during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to Hawaii. EPA expects to make a final decision on whether or not to approve Hawaii's program within 60 days of the public hearing, and will give notice of it in the **Federal Register**. The document will include a summary of the reasons for the final determination and a response to all major comments.

III. Where Are the State Rules Different From the Federal Rules?

States may enact laws more stringent than their federal counterparts. See RCRA section 9008, 42 U.S.C. 6991b. In addition, states may enact laws which are broader in scope than their federal counterparts; that is, the state laws have no counterpart in the federal UST program. This authority is specifically codified in 40 CFR 281.12(a)(3). State requirements that go beyond the scope of the Federal program are not part of the authorized program and EPA cannot enforce them. Although you must comply with these requirements in accordance with Hawaii law, they are not RCRA requirements. The statutory and regulatory provisions we have tentatively decided to authorize are found generally at Hawaii Revised Statutes ("HRS") sections 342L-1 through 342L-53 and Hawaii Administrative Rules ("HAR") 11-281-01 through 11-281-131. However, we consider the following State requirements, which pertain to the provisions involved in this tentative decision, to go beyond the scope of the Federal program. The following analysis of which requirements are broader in scope differs in some ways from the requirements which Hawaii identified as being broader in scope than the Federal program in its application.

1. Hawaii's definition of "owner," set forth at HRS section 342L-1, is broader in scope than the Federal definition of "owner" (see RCRA section 9001(3), 42 U.S.C. 6991(3), and 40 CFR 280.12) to

the extent that it includes persons who do not participate in the management of an UST or tank system who are otherwise not engaged in petroleum production, refining and marketing, but who hold indicia of ownership primarily to protect a security interest in the tank or tank system. More specifically, Hawaii's definition is broader in scope to the extent it requires such persons to comply with the technical standards and financial responsibility requirements since such persons are excluded from those requirements of the Federal UST program pursuant to 40 CFR 280.200 through 280.230.

2. Hawaii's UST program contains permitting requirements. This aspect of Hawaii's program is broader in scope than the Federal program since the Federal UST program does not include analogous permitting requirements. The following provisions pertain to Hawaii's permitting requirements: HRS section 342L-1 (definition of "permit"); HRS section 342L-4 (permits procedures); HRS section 342L-31 (permit requirements and transfer of permit); HAR 11-281-03 (definitions of "installation," "operate" and "permit"); HAR 11-281-23 (permit requirement); HAR 11-281-24(a) (application for a permit); HAR 11-281-24(b) (permit fee); HAR 11-281-24(c)(3) (information required in permit application); HAR 11-281-24(c)(4) (information required in permit application); HAR 11-281-25(a) (5 year permit to install and operate); HAR 11-281-25(b) (1 year to install UST); HAR 11-281-26 (permit renewals); HAR 11-281-27 (action on and timely approval of permit application); HAR 11-281-28 (permit conditions); HAR 11-281-29 (modification of permit and notice of change); HAR 11-281-30 (revocation or suspension of permit); HAR 11-281-31 (change in owner or operator for a permit); HAR 11-281-131 (Appendices II [Application for an UST Permit], IV [Application for Renewal of an UST Permit, June 1999], and V [Application for Transfer of an UST Permit, June 1999]); and the provisions at HRS section 342L-8(b) (enforcement orders may include suspension, modification or revocation of permit), HAR 11-281-34 (maintenance of permit or variance), 11-281-35 (fees), and HAR 11-281-45(c)(6) (maintenance of permit documentation), as they apply to permits.

3. Hawaii's definitions of "regulated substance" at HRS section 342L-1 and HAR 11-281-03 are broader in scope than the Federal definitions of "regulated substance" (see RCRA section 9001(2), 42 U.S.C. 6991(2), and

40 CFR 280.12). These definitions are broader in scope to the extent that Hawaii includes substances that are designated as regulated substances by the Hawaii Department of Health Services, pursuant to subsection (3) of Hawaii's definition of the term, which are neither (a) "any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C [of RCRA])" or (b) "[p]etroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute)." (See 40 CFR 280.12.)

4. Hawaii's UST program contains provisions which allow the State to grant variances. The Hawaii Attorney General's Office has indicated that such variances may be granted where State rules are broader in scope than the Federal regulations. To the extent that such variances are granted, and the resulting requirements imposed pursuant to such variances are broader in scope than the Federal UST requirements, the requirements imposed by such variances will not be federally enforceable as part of the authorized State program. However, to the extent that any variances are issued for aspects of the State's program which result in the imposition of requirements which are merely more stringent than the Federal UST requirements, as opposed to broader in scope, the resulting requirements of such variances will be federally enforceable as part of the authorized State program. The following provisions pertain to Hawaii's variance requirements: HRS section 342L-1 (definition of "variance"); HRS section 342L-5 (variance allowed); HRS section 342L-6 (procedures for variances); HAR 11-281-03 (definition of "variance"); HAR 11-281-32 (variance allowed); HAR 11-281-33 (variance applications); 11-281-131 (Appendix VI [Application for UST Variance, June 1999]); and the provisions at HRS section 342L-8(b) (enforcement order may include suspension, modification or revocation of variance), HAR 11-281-34 (maintenance of variance), 11-281-35 (fees), and HAR 11-281-45(c)(6) (maintenance of variance documentation), as they apply to variances.

5. HRS section 342L-14, which authorizes the Director of the Department of Health to establish certain fees, is broader in scope than the Federal UST program, which does not include an analogous provision.

6. HRS sections 342L-50 through 342L-53, which relate to Hawaii's response program for petroleum releases, are broader in scope than the Federal UST program to the extent that Hawaii includes in the definition of "operator" applicable to these provisions those persons who do not participate in the management of an UST or tank system who are otherwise not engaged in petroleum production, refining and marketing, but who hold indicia of ownership primarily to protect a security interest in the tank or tank system. Such persons are excluded from the Federal definition of "operator," for the purposes of the Federal response program for petroleum releases, pursuant to RCRA section 9003(h)(9), 42 U.S.C. 6991b(h)(9).

7. EPA and the State of Hawaii each exclude from their definitions of the term "underground storage tank" or "UST," farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes. See 40 CFR 280.12 and HAR 11-281-03, respectively. However, Hawaii's definitions of "farm tank" and "underground storage tank" or "UST" each indicate that a farm tank must be used only for farm related purposes. Hence, Hawaii's program is broader in scope than the Federal program to the extent that Hawaii regulates 1,100 gallon capacity or less USTs storing motor fuel on farms when such USTs are not used for either farm or commercial purposes.

8. Hawaii's definition of the term "reportable quantity" at HAR 11-281-03 and the requirements relating to reporting and clean up of spills and overfills of hazardous substances at HAR 11-281-64 are broader in scope than the Federal requirement relating to reporting and clean up of spills or overfills of hazardous substances under 40 CFR 280.53. The Hawaii threshold "reportable quantity" for trichloropropane is 10 lbs. Since the Federal program does not require reporting of releases of trichloropropane, the State's program is broader than the Federal program to this limited extent.

9. Hawaii's requirement for posting of signs, which is found at HAR 11-281-73, requires owners and operators to post signs around the perimeter of a site where contamination poses an immediate health risk or where contaminated media is exposed to the surface, if the Department of Health determines that the posting of such signs is appropriate. This requirement is broader in scope than the Federal UST program, which does not include an analogous provision.

In addition, EPA is not proposing to authorize HRS section 342L-16, which pertains to the "nonliability of department personnel," or HRS section 342L-23, which requires the Director of the Department of Health to establish a directory of UST service providers. These provisions are not a required part of a federally authorized UST program nor are they considered enforcement-related or procedural requirements. Furthermore, these provisions do not impose obligations on UST owners or operators.

IV. Administrative Requirements Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation 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 or the private sector. The UMRA generally excludes from the definition of "Federal intergovernmental mandate" duties that arise from participation in a voluntary Federal program. Hawaii's participation in EPA's state program approval process under RCRA Subtitle I is voluntary. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may own and/or operate underground storage tanks, they are already subject to the regulatory requirements under the existing State requirements that EPA is now tentatively approving and, thus, are not subject to any additional significant or unique requirements by virtue of this action. Thus, the requirements of section 203 of the UMRA also do not apply to today's rule.

Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's action on small entities, "small entity" is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that own and/or operate underground storage tanks in Hawaii are already subject to Hawaii's underground storage tank requirements which EPA is now tentatively approving. This action

merely tentatively approves, for the purpose of RCRA section 9004, those existing State requirements.

Compliance With Executive Order 12866 (Regulatory Planning and Review)

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

Compliance With Executive Order 13045 (Children's Health)

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it approves a state program.

Compliance With Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes."

This proposed rule does not have tribal implications. As an initial matter, there are no federally-recognized Indian tribes within the State of Hawaii. The authorization of Hawaii's UST program will not have substantial direct effects on tribal governments, on the

relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Even if Indian Country existed within the State, Hawaii would not be approved to implement the RCRA underground storage tank program in Indian country and this action would have no effect on the underground storage tank program that EPA would implement in Indian country within the State. Thus, Executive Order 13175 does not apply to this proposed rule.

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This action does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one State. This action simply provides EPA approval of Hawaii's voluntary proposal for its State underground storage tank program to operate in lieu of the Federal underground storage tank program in that State. Thus, the requirements of

section 6 of the Executive Order do not apply.

National Technology Transfer and Advancement Act

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

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

Paperwork Reduction Act

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

Executive Order 13211 (Energy Effects)

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

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This action is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 21, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.
[FR Doc. 01-24594 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 81

RIN 0920-ZA01

Guidelines for Determining the Probability of Causation Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Notice of Proposed Rulemaking

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would implement select provisions of the Energy Employees Occupational Illness Compensation Program Act of 2000 ("EEOICPA" or "Act"). The Act requires the promulgation of guidelines, in the form of regulations, for determining whether an individual with cancer shall be found, "at least as likely as not," to have sustained that cancer from exposure to ionizing radiation in the performance of duty for nuclear weapons production programs of the Department of Energy and its predecessor agencies. The guidelines will be applied by the U.S. Department of Labor, which is responsible for determining whether to award compensation to individuals seeking federal compensation under the Act.

DATES: Comments: The Department invites written comments on this Notice of Proposed Rulemaking from interested parties. Comments on the Notice of Proposed Rulemaking must be received by December 4, 2001.

ADDRESSES: Address written comments on the notice of proposed rulemaking to the NIOSH Docket Officer. Submit comments electronically by e-mail to NIOCINOCKET@CDC.GOV. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. Alternatively, submit printed comments to the following address: NIOSH Docket Office, Robert A. Taft Laboratories; M/S C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS-R45, Cincinnati, OH 45226, Telephone 513-841-4498 (this is not a toll-free number). Information requests can also be submitted by e-mail to OCAS@CDC.GOV

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, arguments, recommendations, and data. Comments are invited on any topic related to this rulemaking. Some generic topics for comment include the following questions:

(1) Does the proposal make appropriate use of current science and medicine for evaluating and quantifying cancer risks for DOE workers exposed to ionizing radiation in the performance of duty?

(2) Does the proposal appropriately adapt compensation policy as it has been applied for the compensation of veterans with radiation exposure from atomic bombs to compensation policy for radiation-exposed nuclear weapons production workers?

(3) Does the proposal appropriately and adequately address the need to ensure procedures under this rule remain current with advances in radiation health research?

Comments should identify the author(s), return address, and phone number, in case clarification is needed. Comments can be submitted by e-mail to: NIOCINOCKET@CDC.GOV. If submitting comments by e-mail, they should be provided as a Word or Word Perfect file attachment. Printed comments can also be submitted to the address above. The Secretary will consider all communications received on or before the closing date for comments. All comments submitted will be available for examination in the Rule Docket both before and after the closing date for comments. A report summarizing each substantive public contact with personnel involved in this rulemaking will be filed in the docket. An electronic docket containing all comments submitted by e-mail will be available over the Internet on the National Institute for Occupational Safety and Health (NIOSH) homepage at www.cdc.gov/niosh.

HHS will request the Advisory Board on Radiation and Worker Health, an advisory committee to HHS established under EEOICPA, to conduct a technical review of this proposal. Notices announcing the meetings of the Board will be published in the **Federal Register**. The record for this rulemaking will remain open until the Board has completed its review.

II. Final Rule

The Department of Health and Human Services ("HHS") expects to issue a final rule within six months of publication of this notice of proposed rulemaking.

III. Background

A. Statutory Authority

The Energy Employees Occupational Illness Compensation Program Act of 2000 ("EEOICPA"), Public Law 106-398, 114 Stat. 1654, 1654A-1231 (October 30, 2000), was enacted as Title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. EEOICPA established a compensation program to provide a lump sum payment of \$150,000 and medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors, and subcontractors. This legislation also provided for payment of compensation to certain survivors of covered employees.

EEOICPA instructed the President to designate one or more federal agencies to carry out the compensation program. Pursuant to this statutory provision, the President issued Executive Order 13179 titled Providing Compensation to America's Nuclear Weapons Workers, which assigned primary responsibility for administering the compensation program to the Department of Labor ("DOL"). 65 FR 77,487 (Dec. 7, 2000). DOL published an interim final rule governing DOL's administration of EEOICPA on May 25, 2001 (66 FR 28948).

The executive order directed HHS to perform several technical and policymaking roles in support of the DOL program:

(1) HHS is to develop guidelines to be used by DOL to assess the likelihood that an employee with cancer developed that cancer as a result of exposure to radiation in performing his or her duties at a DOE facility or Atomic Weapons Employer (AWE) facility. These "Probability of Causation" guidelines are the subject of this proposal.

(2) HHS is also to develop methods to estimate radiation doses ("dose reconstruction") for certain individuals with cancer applying for benefits under the DOL program. These methods are being published simultaneously with this proposal as an interim final rule with request for comments under 42 CFR part 82 in this issue of the **Federal Register**. HHS is to apply these methods to conduct the program of dose reconstruction required by EEOICPA.

(3) HHS is to staff the Advisory Board on Radiation and Worker Health and provide it with administrative and other necessary support services. The Board, a federal advisory committee, will

advise HHS in implementing its roles under EEOICPA described here.

(4) Finally, HHS is to develop and apply procedures for considering petitions to be added to the *Special Exposure Cohort* established under EEOICPA by classes of employees. Employees included in the *Special Exposure Cohort* who have a *specified cancer* and meet other conditions, as defined by EEOICPA and DOL regulations (66 FR 28948), qualify for compensation under EEOICPA. HHS procedures for considering Special Exposure Cohort petitions are under development. HHS expects to issue these procedures within the next six months.

As provided for under section 3625 of EEOICPA, HHS is implementing its responsibilities with the assistance of the National Institute for Occupational Safety and Health ("NIOSH"), an institute of the Centers for Disease Control and Prevention, HHS.

B. Purpose of Probability of Causation Guidelines

Under EEOICPA, a covered employee seeking compensation for cancer, other than as a member of the *Special Exposure Cohort* seeking compensation for a *specified cancer*, is eligible for compensation only if DOL determines that the cancer was "at least as likely as not" (a 50% or greater probability) caused by radiation doses incurred in the performance of duty while working for DOE and/or an atomic weapons employer (AWE) facility. These guidelines provide DOL with the procedure to make these determinations, and specify the information DOL will use.

HHS notes that EEOICPA does not authorize the establishment of new radiation protection standards through the promulgation of these guidelines, and these proposed guidelines would not constitute such new standards.

C. Statutory Requirements for Probability of Causation Guidelines

Section 3623(c) of EEOICPA makes several general requirements concerning the development of these guidelines. It requires the guidelines provide for determinations that are based on the radiation dose received by the employee, incorporating the methods of dose reconstruction to be established by HHS. It requires determinations be based on the upper 99 percent "confidence interval" (credibility limit) of the probability of causation in the radioepidemiological tables published under section 7(b) of the Orphan Drug Act (42 U.S.C. 241 note), as such tables may be updated. EEOICPA also requires

HHS to consider the type of cancer, past health-related activities, the risk of developing a radiation-related cancer from workplace exposure, and other relevant factors. It is also important to note EEOICPA does not include a requirement limiting the types of cancers to be considered radiogenic for these guidelines.

D. Understanding Probability of Causation

Probability of Causation is a technical term generally meaning an estimate of the percentage of cases of illness caused by a health hazard among a group of persons exposed to the hazard. This estimate is used in compensation programs as an estimate of the probability or likelihood that the illness of an individual member of that group was caused by exposure to the health hazard. Other terms for this concept include "assigned share" and "attributable risk percent".

In this proposal, the potential hazard is ionizing radiation to which U.S. nuclear weapons workers were exposed in the performance of duty; the illnesses are specific types of cancer. The probability of causation (PC) is calculated as the risk of cancer attributable to radiation exposure (RadRisk) divided by the sum of the baseline risk of cancer to the general population (BasRisk) plus the risk attributable to the radiation exposure, then multiplied by 100 percent, as follows:

$$\frac{\text{RadRisk}}{\text{RadRisk} + \text{BasRisk}} \times 100\% = \text{PC}$$

This calculation provides a percentage estimate between 0 and 100 percent, where 0 would mean 0 likelihood that radiation caused the cancer and 100 would mean 100 percent certainty that radiation caused the cancer.

Scientists evaluate the likelihood that radiation caused cancer in a worker by using medical and scientific knowledge about the relationship between specific types and levels of radiation dose and the frequency of cancers in exposed populations. Simply explained, if research determines that a specific type of cancer occurs more frequently among a population exposed to a higher level of radiation than a comparable population (a population with less radiation exposure but similar in age, gender, and other factors that have a role in health), and if the radiation exposure levels are known in the two populations, then it is possible to estimate the proportion of cancers in the exposed population that may have been caused by a given level of radiation.

If scientists consider this research sufficient and of reasonable quality, they can then translate the findings into a series of mathematical equations that estimate how much the risk of cancer in a population would increase as the dose of radiation incurred by that population increases. The series of equations, known as a dose-response or quantitative risk assessment model, may also take into account other health factors potentially related to cancer risk, such as gender, smoking history, age at exposure (to radiation), and time since exposure. The risk models can then be applied as an imperfect but reasonable approach to determine the likelihood that the cancer of an individual worker was caused by his or her radiation dose.

E. Development and Use of Radioepidemiological Tables and Interactive RadioEpidemiological Program (IREP)

In 1985, in response to a congressional mandate in the Orphan Drug Act, a panel established by the National Institutes of Health developed a set of *radioepidemiological tables*. The tables serve as a reference tool providing probability of causation estimates for individuals with cancer who were exposed to ionizing radiation. Use of the tables requires information about the person's dose, gender, age at exposure, date of cancer diagnosis and other relevant factors. The tables are used by the Department of Veterans Affairs (DVA) to make compensation decisions for veterans with cancer who were exposed in the performance of duty to radiation from atomic weapon detonations.

The primary source of data for the 1985 tables is research on cancer-related deaths occurring among Japanese atomic bomb survivors from World War II.

The 1985 tables are presently being updated by the National Cancer Institute (NCI) and the Centers for Disease Control and Prevention¹ to incorporate progress in research on the relationship between radiation and cancer risk. The draft update has been reviewed by the National Research Council². DOL will employ the updated version of the tables, with certain additional modifications important to claims under EEOICPA (described under "G" below), as a basis for determining probability of

¹ Draft Report of the NCI-CDC Working Group to Revise the 1985 NIH Radioepidemiological Tables, May 31, 2000.

² A Review of the Draft Report of the NCI-CDC Working Group to Revise the "1985 Radioepidemiological Tables". National Research Council.

causation for employees covered under EEOICPA.

A major scientific change achieved by this update is the use of risk models developed from data on the occurrence of cancers (cases of illness) rather than the occurrence of cancer deaths among Japanese atomic bomb survivors. The risk models are further improved by being based on more current data as well. Many more cancers have been modeled in the revised report. The new risk models also take into account factors that modify the effect of radiation on cancer, related to the type of radiation dose, the amount of dose, and the timing of the dose.

A major technological change accompanying this update, which represents a scientific improvement, is the production of a computer software program for calculating probability of causation. This software program, named the *Interactive RadioEpidemiological Program (IREP)*, allows the user to apply the NCI risk models directly to data on an individual employee. This makes it possible to estimate probability of causation using better quantitative methods than could be incorporated into printed tables. In particular, IREP allows the user to take into account uncertainty concerning the information being used to estimate probability of causation. There typically is uncertainty about the radiation dose levels to which a person has been exposed, as well as uncertainty relating levels of dose received to levels of cancer risk observed in study populations.

Accounting for uncertainty is important because it can have a large effect on the probability of causation estimates. DVA, in their use of the 1985 radioepidemiological tables, uses the probability of causation estimates found in the tables at the upper 99 percent credibility limit. This means when DVA determines whether the cancer of a veteran was more likely than not caused by radiation, they use the estimate that is 99 percent certain to be greater than the probability that would be calculated if the information on dose and the risk model were perfectly accurate. Similarly, these HHS guidelines, as required by EEOICPA, will use the upper 99 percent credibility limit to determine whether the cancers of employees are at least as likely as not caused by their occupational radiation doses. This will help minimize the possibility of denying compensation to claimants under EEOICPA for those employees with cancers likely to have been caused by occupational radiation exposures.

F. Use of IREP for Energy Employees

The risk models developed by NCI and CDC for IREP provide the primary basis for developing guidelines for estimating probability of causation under EEOICPA. They directly address 33 cancers and most types of radiation exposure relevant to employees covered by EEOICPA. These models take into account the employee's cancer type, year of birth, year of cancer diagnosis, and exposure information such as years of exposure, as well as the dose received from gamma radiation, x rays, alpha radiation, beta radiation, and neutrons during each year. The risk model for lung cancer takes into account smoking history as well. None of the risk models explicitly accounts for exposure to other occupational, environmental, or dietary carcinogens. Models accounting for these factors have not been developed and may not be possible to develop based on existing research. Moreover, DOL could not consistently or efficiently obtain the data required to make use of such models.

IREP models do not specifically include cancers as defined in their early stages: Carcinoma in situ (CIS). These lesions are becoming more frequently diagnosed, as the use of cancer screening tools, such as mammography, have increased in the general population. The risk factors and treatment for CIS are frequently similar to those for malignant neoplasms, and, while controversial, there is growing evidence that CIS represents the earliest detectable phase of malignancy³. Therefore, for determining compensation under EEOICPA, HHS is proposing that CIS be treated as a malignant neoplasm of the specified site.

Cancers identified by their secondary sites (sites to which a malignant cancer has spread), when the primary site is unknown, raise another issue for the application of IREP. This situation will most commonly arise when death certificate information is the primary source of a cancer diagnosis. It is accepted in medicine that cancer-causing agents such as ionizing radiation produce primary cancers. This means, in a case in which the primary

site of cancer is unknown, the primary site must be established by inference to estimate probability of causation.

HHS is proposing to establish such assignments in these guidelines, based on an evaluation of the relationship between primary and secondary cancer sites using the National Center for Health Statistics (NCHS) Mortality Database for years 1995-1997. Because national cancer incidence databases (e.g., the National Cancer Institute's Surveillance, Epidemiology and End Results program) do not contain information about sites of metastasis, the NCHS database is the best available data source at this time to assign the primary site(s) most likely to have caused the spread of cancer to a known secondary site. For each secondary cancer, the set of primary cancers producing approximately 75% of that secondary cancer among the U.S. population was identified (males and females were considered separately). The sets are tabulated in this rule (Table 1). HHS is proposing that the final assignment of a primary cancer site for an individual claim would be determined by DOL on a case-by-case basis, as the site among possible primary sites which results in the highest probability of causation estimate.

Employees diagnosed with two or more primary cancers also raise a special issue for determining probability of causation. Even under the assumption that the biological mechanisms by which each cancer is caused are unrelated, uncertainty estimates about the level of radiation delivered to each cancer site will be related. While fully understanding this situation requires statistical training, the consequence has simple but important implications. Under this proposal, instead of determining the probability that each cancer was caused by radiation, DOL would have to perform an additional statistical procedure following the use of IREP to determine the probability that *at least one* of the cancers was caused by the radiation. This approach is important to the claimant because it would determine a higher probability of causation than would be determined for either cancer individually.

G. Limitations of IREP for Energy Employees

IREP is being developed to serve the needs of DVA in deciding cancer compensation claims for veterans. This means IREP has to be adapted in various ways to meet the needs of DOL, because the radiation exposure experience of

³ Kerlikowski, K, J Barclay, D Grady, EA Sickles, and V Ernster. "Comparison of risk factors for ductal carcinoma in situ and invasive breast cancer." *J. Natl. Canc. Inst.* 89:76-82, 1997.

Grippio, PJ, and EP Sandgren. "Highly invasive transitional cell carcinoma of the bladder in a simian virus 40 T-antigen transgenic mouse model". *Am. J. Pathol.* 157:805-813, 2000.

Correa P. "Morphology and natural history of cancer precursors" Chapter 4 in: *Cancer Epidemiology and Prevention*, 2nd Edition, D Schottenfeld and JF Fraumeni Jr, eds. New York: Oxford University Press, 1996.

employees covered by EEOICPA differs substantially.

Some employees covered by EEOICPA were substantially exposed to radon and other sources of high linear energy transfer (LET) radiation. This type of radiation exposure has unique properties affecting cancer risk, which are not addressed in the risk models included in IREP. Specifically, the IREP risk models do not account for a possible *inverse dose-rate effect* for high-LET radiation exposures. This effect means at any particular dose level, especially higher dose levels, a dose of high LET radiation incurred gradually over time is more likely to cause cancer than the same total dose incurred quickly or at once. A substantial body of research supports this finding, including studies of uranium miners,⁴ patients exposed to bone-seeking radium alpha particles,⁵ and research on the cancer effects of high LET radiation in animals.⁶ Because high-LET radiation is an important type of radiation exposure among employees covered by EEOICPA, NIOSH will modify IREP to include uncertainty associated with the assumption of an inverse dose-rate effect for these exposures.

The DOE workforce has been exposed to various types of neutron energies and these exposures are frequently documented in the worker's dosimetry records. The *relative biological effectiveness* (RBE) of radiation exposure, a factor in cancer risk models that accounts for the differing level of cancer risk associated with different forms of radiation, varies as a function of neutron energy.⁷ This variation in RBE related to differing neutron energy is not accounted for in the current version of IREP, which contains a single neutron RBE distribution. Therefore, NIOSH will modify IREP for DOE workers to include different RBE

distributions for neutrons of various energies.

The currently-available draft of IREP does not incorporate a unique lung cancer model for radon exposure, which is an important exposure for some workers covered under EEOICPA. Using epidemiologic evidence on the lung carcinogenicity of radon exposures, NCI is incorporating a lung cancer model for radon exposures into the revised version of IREP. The data source for this model is the analysis conducted by the federal Radiation Exposure Compensation Act Committee.⁸

NIOSH will modify IREP to eliminate an assumption for non-leukemia cancers that low-level acute radiation doses (defined in IREP as doses between 3 and 30 cSv) cause less risk, per unit of dose, than higher level acute doses. A recent study of the Japanese atomic bomb survivors supports this change.⁹

Additionally, some employees covered by EEOICPA were required, as a condition of employment, to undergo routine medical screening with x rays. The dose resulting from these x rays will be included in their dose reconstruction. This requires NIOSH to add to IREP an RBE distribution appropriate to the low-energy form of radiation produced from some of these x rays.¹⁰

There is no risk model in IREP for estimating the probability of causation of bone cancer by high-LET radiation exposure. Research has found bone cancer risk substantially and significantly elevated among animals and humans exposed to certain forms of high-LET radiation.¹¹ NIOSH will add a risk model for bone cancer, based on recently completed assessments of risks associated with plutonium exposures.¹²

Limitations of current research and development have prevented NIOSH

from considering and implementing all possible improvements to IREP at the time of this proposal. In the future, NIOSH may make additional changes in IREP to address differences in radiation-related cancer risk between Japanese atomic bomb survivors and employees involved in nuclear weapons production. Some research has shown substantial differences in risk for certain cancers, such as brain cancer and multiple myeloma.¹³ The radiation-related risk of these cancers is significantly elevated among employees involved in nuclear weapons production, whereas it is not among the Japanese study population. The IREP risk models for these cancers were produced using data from the Japanese study population.

Similarly, it may be possible to improve the fit of IREP risk models to employees covered by EEOICPA with respect to differences between the frequency of certain cancers in the general population in the United States versus Japan. The IREP risk models include a simplistically derived factor (*risk transfer*) that accounts for these differences, based on expert judgment. For some cancers, such as breast and stomach cancer, sufficient research may exist to improve this factor. In addition, where current IREP risk models could be replaced with risk models based on studies of U.S. DOE workers, or other U.S. populations, this factor could be omitted entirely.

The potential future use of risk models based on studies of U.S. DOE workers may also eliminate limitations arising because data are sparse for certain cancers among the Japanese atomic bomb survivors, such as most specific types of leukemia. Using data on the Japanese cohort, the effect on risk of age at time of exposure to radiation, an important modifier of leukemia risk, cannot be estimated for specific types of leukemia, except chronic myeloid leukemia. It can only be estimated for other leukemia types by using a general leukemia model that combines data from cases of different types of leukemia.

Finally, NIOSH may make modifications in cancer risk models in IREP, as appropriate and if feasible, to account for the changing frequency among the general population (baseline

⁴ Hornung RW, Meinhardt TJ. Quantitative risk assessment of lung cancer in U.S. uranium miners. *Health Phys* 52: 417-430, 1987.

Lubin JH, Boice JD Jr, Edling C, et al. Radon-exposed underground miners and the inverse dose-rate (protraction enhancement) effects. *Health Phys* 69:494-500, 1995.

⁵ Mays CW, Spiess H. Bone sarcomas in patients given radium-224. In: *Radiation Carcinogenesis: Epidemiology and Biological Significance*. Boice JD Jr, Fraumeni JF Jr (eds): New York: Raven Press, pp 241-252, 1984.

⁶ Luebeck EG, Curtis SB, Cross FT, Moolgavkar SH. Two-stage model of radon-induced malignant lung tumors in rats: effects of cell killing. *Radiat. Res.* 145:163-173, 1996.

Hall EJ, Miller RC, Brenner DJ. Neoplastic transformation and the inverse dose-rate effect for neutrons. *Radiat. Res.* 128 (Suppl): S75-S80, 1991.

⁷ International Commission on Radiological Protection (ICRP) 60: "1990 Recommendations of the International Commission on Radiological Protection." *Ann. ICRP* 21(1-3):1-201.

⁸ Final Report of the Radiation Exposure Compensation Act Committee, submitted to the Human Radiation Interagency Working Group, July 1996 (Appendix A), 30 pp (plus Figures).

⁹ Pierce DA and Preston DL "Radiation-related cancer risks at low doses among atomic bomb survivors." *Radiat. Res.* 154:178-186, 2000.

¹⁰ ICRU Report 40: The quality factor in radiation protection. *Internat. Commission on Radiat. Units and Meas.*, 33 pp, 1986.

Hall EJ. "Linear energy transfer and relative biological effectiveness". Chapter 9 in *Radiobiology for the Radiobiologist*, 4th Edition. Philadelphia: J.B. Lippincott, 1994.

¹¹ International Agency for Research on Cancer (IARC). *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*, Vol. 78 Ionizing Radiation, Part 2: Some Internally Deposited Radionuclides. Lyon, France: IARC Press, 595 pp, 2001.

¹² Grogan HA, Sinclair WK, and Voillequé PG. "Risks of fatal cancer from inhalation of ^{239,240}plutonium by humans: a combined four-method approach with uncertainty evaluation" *Health Physics* 80:447-461, 2001.

¹³ Alexander V and DiMarco JH. "Reappraisal of brain tumor risk among U.S. nuclear workers: a 10-year review." *Occupational Medicine: State of the Art Reviews* 16(2):289-315, 2001.

Cardis E, Gilbert ES, Carpenter L, et al. "Effects of low doses and low dose rates of external ionizing radiation: cancer mortality among nuclear industry workers in three countries." *Radiat. Res.* 142:117-132, 1995.

rates) of certain types of cancer in the United States. Certain types of cancer (e.g., lung cancer among women, breast cancer) have become more frequent in recent decades. Similarly, HHS may make modifications in cancer risk models to reflect the differing frequency of certain types of cancer among different racial and ethnic groups in the United States (e.g., multiple myeloma, skin cancers). The effect of these modifications, at such time as they may become feasible, would be to improve the accuracy of probability of causation estimates.

H. Procedures for review and public comment on NIOSH-IREP

As described under Section G above, certain current and potential future changes to the cancer risk models in IREP are particularly appropriate for addressing the radiation exposures and statutory requirements of claimants under EEOICPA. As a result, the version of IREP to include NIOSH modifications will be unique and distinguished as "NIOSH-IREP." This version, which DOL will use to estimate probability of causation under EEOICPA, will be reviewed by the Advisory Board on Radiation and Worker Health. NIOSH-IREP will be available for public review on the NIOSH homepage at: www.cdc.gov/niosh, by September 30, 2001. NIOSH-IREP will include documentation of underlying risk models and calculations. The public will also be able to obtain complete information about NIOSH-IREP, including printed reports, by contacting NIOSH at its toll-free telephone information service: 1-800-35-NIOSH (1-800-356-4674).

The public may comment on NIOSH-IREP at any time. Comments should be sent to NIOSH following instructions at the NIOSH-IREP web page cited above, or by sending printed comments to: NIOSH-IREP Comments, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS-R45, Cincinnati, Ohio 45226. All comments will be considered. In addition, NIOSH will forward all substantive comments to the Advisory Board on Radiation and Worker Health.

I. Updating NIOSH-IREP

NIOSH will periodically revise NIOSH-IREP to add, modify, or replace cancer risk models, improve the modeling of uncertainty, and improve the functionality and user-interface of NIOSH-IREP. Primary sources of potential improvements in cancer risk models include new epidemiologic research on DOE employee populations and periodic updates from scientific

committees evaluating such research (e.g., the Committee on Biological Effects of Ionizing Radiation). Further description of the rationale for such scientific improvements is described under paragraph II.G. above.

Improvements may also be directly recommended by the Advisory Board on Radiation and Worker Health, scientific reviews relevant to or addressing this program, public comment, or by DOL, which is the principal user and hence may require functional changes and improvements in the user-interface.

Substantive changes to NIOSH-IREP (changes that would substantially affect estimates of probability of causation calculated using NIOSH-IREP, including the addition of new cancer risk models) will be submitted to the Advisory Board on Radiation and Worker Health for review. Proposed changes provided to the Advisory Board for review will also be made available to the public. Instructions for obtaining relevant materials and providing public comment will be provided in the notice of the Advisory Board meeting, published in the **Federal Register**.

J. Public notice on plans and changes implemented to update NIOSH-IREP

NIOSH will periodically publish a notice in the **Federal Register** informing the public of proposed substantive changes to NIOSH-IREP currently under development, the status of the proposed changes, and the expected completion dates. NIOSH will also publish a notice in the **Federal Register** notifying the public of substantial changes to NIOSH-IREP (changes that would substantially affect estimates of probability of causation calculated using NIOSH-IREP, including the addition of new cancer risk models). In the notice, NIOSH will address relevant comments received by NIOSH.

K. Operating Guide for NIOSH-IREP

DOL will use procedures specified in the *NIOSH-IREP Operating Guide* to calculate probability of causation estimates under EEOICPA. The guide provides current, step-by-step instructions for the operation of NIOSH-IREP. The procedures include entering personal, diagnostic, and exposure data; setting/confirming appropriate values for variables used in calculations; conducting the calculation; and, obtaining, evaluating, and reporting results.

An initial version of the *NIOSH-IREP Operating Guide* will be available to the public online on the NIOSH homepage at: www.cdc.gov/niosh, by September 30, 2001. The public will be able to obtain printed copies by contacting

NIOSH at its toll-free telephone information service: 1-800-35-NIOSH (1-800-356-4674).

L. Cancer Unrelated to Radiation

Chronic lymphocytic leukemia (CLL) is a form of leukemia not found to be radiogenic in studies conducted worldwide of a wide variety of radiation-exposed populations, including the Japanese atomic bomb survivors, persons exposed to x rays and Thorotrast during medical treatment, and nuclear industry workers.¹⁴ Therefore, for the purposes of this proposed rule, the probability of causation for CLL would be assigned a value of zero. HHS may modify this provision in response to new scientific findings.

IV. History of Rule Development

A. NIOSH Research on the Health of DOE Workers

Expert judgment has been applied to modify certain IREP risk models and develop guidelines for applying these models appropriately for employees covered by EEOICPA. An important basis for this judgment has been the research experience of NIOSH and its external research partners on radiation-related cancers among DOE employees and U.S. uranium miners. NIOSH has conducted a program of federally sponsored health research on DOE employees since 1991. NIOSH completed the principal occupational health research establishing lung cancer risks associated with radon exposure among uranium miners.

¹⁴ Andersson, M., Carstensen B., Vissfeldt J. "Leukemia and other related hematological disorders among Danish patients exposed to Thorotrast." *Radiat Res* 134:224-233, 1993.

Cardis E, Gilbert ES, Carpenter L, et al. "Effects of low doses and low dose rates of external ionizing radiation: cancer mortality among nuclear industry workers in three countries." *Radiat. Res.* 142:117-132, 1995.

Curtis RE, Boice JD Jr, Stovall M, et al. "Relationship of leukemia risk to radiation dose following cancer of the uterine corpus." *J Natl Cancer Inst* 86:1315-1324, 1994.

Darby SC, Doll R, Gill SK, et al. "Long-term mortality after a single treatment course with x rays in patients treated for ankylosing spondylitis." *Br J Cancer* 55:179-190, 1987.

International Agency for Research on Cancer (IARC). *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Vol. 78. Ionizing Radiation, Part 2: Some Internally Deposited Radionuclides.* Lyon, France: IARC press, 595 p, 2001.

Muirhead CR, Goodill AA, Haylock RGE et al. "Occupational radiation exposure and mortality second analysis of the National Registry for Radiation Workers." *J Radiol Prot* 19:3-26, 1999.

Preston DL, Kusumi S, Tomonaga M, et al. "Cancer incidence in atomic bomb survivors. Part III: Leukemia, lymphoma and multiple myeloma, 1950-1987." *Radiat Res* 137:S68-S97, 1994.

B. Relationship With NCI-CDC Update of Radioepidemiological Tables

Within HHS, NIOSH and NCI have worked closely together to adapt the NCI-CDC update of the radioepidemiological tables, developed as IREP, to meet as many of the needs of employees covered by EEOICPA as possible. Some potential changes could not be accomplished before initial implementation of the compensation program under EEOICPA. NIOSH and NCI will continue collaborating to address these needs. Other changes uniquely useful for employees covered by EEOICPA, as discussed in this Preamble, will be incorporated into the version of IREP designed specifically for employees covered by EEOICPA.

C. Technical Review by the Advisory Board on Radiation and Worker Health

NIOSH anticipates that the guidelines in this proposed rule will be reviewed by the Advisory Board on Radiation and Worker Health, which is required by Section 3623(c) of EEOICPA. HHS will consider any findings of this review in promulgating the final regulation.

D. Consultation With Experts and Interested Parties

HHS has consulted individually with a wide variety of experts and interested parties to help ensure the quality and practicality of these guidelines. Reports on these consultations are available in the regulatory docket for public review.

V. Summary of Proposed Rule

Congress, in enacting EEOICPA, created a new Energy Employees Occupational Illness Compensation Program to ensure an efficient, uniform, and adequate compensation system for certain employees. Through Executive Order 13179, the President assigned primary responsibility for administering the program to DOL. The President assigned various technical responsibilities for policymaking and assistance to HHS. Included among these is promulgation of this proposed rule to establish guidelines DOL will apply to adjudicate cancer claims for covered employees seeking compensation for cancer, other than as members of the *Special Exposure Cohort* seeking compensation for a *specified cancer*. Sections 81.20-81.25 and 81.30 provide guidelines for determining the probability of causation with respect to all known cancers.

Introduction

Sections 81.0 and 81.1 briefly describe how this proposed rule relates to DOL authorities under EEOICPA and the assignment of authority for this rule

to HHS. Section 81.2 summarizes the specific provisions of EEOICPA directing HHS in the development of this proposed rule.

Definitions

This section of the regulation proposes definitions for the principal terms used in this part. It includes terms specifically defined in EEOICPA that, for the convenience of the reader of this part, are repeated in this section.

Data Required To Estimate Probability of Causation

Sections 81.5 and 81.6 propose the sources and types of personal, medical, and radiation dose information that would be required by this regulation. Claimants will provide personal and medical information to DOL under DOL regulations 20 CFR part 30. NIOSH will provide radiation dose information pursuant to 20 CFR part 30. NIOSH will develop the dose information required pursuant to the HHS regulation under 42 CFR part 82 (published in this issue of the *Federal Register*), which is being promulgated concurrently with this proposed rule. The application of this personal, medical, and radiation dose information to estimate probability of causation is described generally under §§ 81.22-81.25.

Requirements for Risk Models Used To Estimate Probability of Causation

Sections 81.10 and 81.11 describe the use of the risk models and uncertainty analysis underlying the NIH Radioepidemiological Tables in their current, updated form, which is a software program named the "Interactive RadioEpidemiological Program" (IREP). IREP is discussed extensively above. These sections also propose criteria by which these risk models may be changed to ensure that probability of causation estimates calculated by EEOICPA represent the unique exposure and disease experiences of employees covered by EEOICPA. HHS seeks comments on these criteria.

Guidelines To Estimate Probability of Causation

Sections 81.20 and 81.21 propose requiring DOL to use NIOSH-IREP to estimate probability of causation for cancers for which probability of causation estimates can be calculated using available cancer risk models. Section 81.21 also proposes requiring DOL to assume carcinoma *in situ* (ICD-9¹⁵ codes 230-234), neoplasms of

uncertain behavior (ICD-9 codes 235-238), and neoplasms of unspecified nature (ICD-9 code 239) are malignant, for purposes of estimating probability of causation. HHS seeks comment on these assumptions and any conditions or limitations that should be considered with regard to these assumptions.

Sections 81.22-81.25 propose general guidelines for the use of NIOSH-IREP and specific applications to accommodate special circumstances anticipated. The special circumstances include claims in which: (1) The primary site of a metastasized cancer is unknown; (2) the subtype of leukemia presented lacks a single, optimal risk model in NIOSH-IREP; and (3) two or more primary cancers are presented, requiring further statistical adjustment of probability of causation estimates calculated using NIOSH-IREP.

The procedure concerning subtypes of leukemia (2) is needed because of a limitation of the data on Japanese atomic bomb survivors, as discussed previously in this proposal. The general leukemia model in IREP allows for adjustment for age at exposure, which is an important modifier of leukemia risk. The data are too sparse, however, to allow for such an adjustment with respect to specific types of leukemia, with the exception of chronic myeloid leukemia. Since it is not possible to determine which factor, age at exposure or leukemia subtype, is more important to determining probability of causation for most specific types of leukemia, the guidelines would require use of both the general model and the specific model. The guidelines propose requiring DOL to use the findings of whichever model produces the higher probability of causation estimate.

HHS seeks comments on the strategies adopted in this proposed rule to address each of these special circumstances, and on other needs not identified in this proposal.

Section 81.30 proposes non-radiogenic cancers for which DOL would assign a value of zero to the probability of causation. Chronic Lymphocytic Leukemia (ICD-9 Code: 204.1) is the only cancer specified. HHS is seeking comments on this section. The public should be aware that the addition of cancers to this section would require broadly established

¹⁵ most recent version of this system, ICD-10, will not be used because the cancer risk models have been constructed using ICD-9.

See: The International Classification of Diseases Clinical Modification (9th Revision) Volume I&II. (1991) Department of Health and Human Services Publication No. (PHS) 91-1260, U.S. Government Printing Office, Washington D.C.

¹⁵ ICD-9 is a version of the standard system of classifying diseases that will be used by IREP. The

consensus of non-radiogenicity among the medical and scientific communities.

VI. Significant Regulatory Action (Executive Order 12866)

This rule is a "significant regulatory action," within the meaning of Executive Order 12866, because it raises novel or legal policy issues arising out of the legal mandate established under EEOICPA. The rule is designed to establish objective guidelines, grounded in current science, to support DOL in the adjudication of applicable claims seeking compensation for cancer under EEOICPA. The guidelines will be applied by DOL to calculate a reasonable, scientifically supported determination of the probability that a cancer for which a claimant is seeking compensation was as likely as not caused by radiation doses incurred in the performance of duty by the covered employee. The financial cost to the federal government of applying these guidelines is covered under administrative expenses estimated by DOL under its rule (see FR 28948, May 25, 2001).

The proposed rule carefully explains the manner in which the regulatory action is consistent with the mandate for this action under section 3623(c) of EEOICPA and implements the detailed requirements concerning this action under this section of EEOICPA. The proposed rule does not interfere with State, local, and tribal governments in the exercise of their governmental functions.

The proposed rule is not considered economically significant, as defined in section 3(f)(1) of the Executive Order 12866. This proposal has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR parts 1 and 30. DOL has determined that its rule fulfills the requirements of Executive Order 12866 and provides estimates of the aggregate cost of benefits and administrative expenses of implementing EEOICPA under its rule (see FR 28948, May 25, 2001).

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. This proposal affects only DOL, HHS, and some

individuals filing compensation claims under EEOICPA. Therefore, a regulatory flexibility analysis as provided for under RFA is not required.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, requires an agency to invite public comment on and to obtain OMB approval of any regulation that requires ten or more people to report information to the agency or to keep certain records. This proposed rule does not contain any information collection requirements. It provides guidelines only to the U.S. Department of Labor (DOL) for adjudicating compensation claims and thus requires no reporting or recordkeeping. Information required by DOL to apply these guidelines is being provided by HHS and by individual claimants to DOL under DOL regulations 20 CFR part 30 (see 66 FR 28948, May 25, 2001). Thus, HHS has determined that the PRA does not apply to this proposed rule.

IX. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report to Congress promulgation of this proposed rule prior to its effective date. The report will state that the Department has concluded that this proposed rule is not a "major rule" because it is not likely to result in an annual effect on the economy of \$100 million or more. However, this proposed rule has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR parts 1 and 30. DOL has determined that its rule is a "major rule" because it will likely result in an annual effect on the economy of \$100 million or more.

X. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, "other than to the extent that such regulations incorporate requirements specifically set forth in law." For purposes of the Unfunded Mandates Reform Act, this proposed rule does not include any Federal mandate that may result in increased annual expenditures in excess of \$100 million by State, local or tribal governments in the aggregate, or by the private sector.

XI. Executive Order 12988 (Civil Justice)

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform and will not unduly burden the Federal court system. Probability of causation may be an element in reviews of DOL adverse decisions in the United States District Courts pursuant to the Administrative Procedure Act. However, DOL has attempted to minimize that burden by providing claimants an opportunity to seek administrative review of adverse decisions, including those involving probability of causation. HHS has provided a clear legal standard for DOL to apply regarding probability of causation. This proposal has been reviewed carefully to eliminate drafting errors and ambiguities.

XII. Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The proposed rule does 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."

XIII. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this proposed rule on children. The agency has determined that the rule would have no effect on children.

XIV. Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this proposed rule on energy supply, distribution or use, and has determined that the rule is not likely to have a significant adverse effect on them.

List of Subjects in 42 CFR Part 81

Cancer, Government Employees, Radiation protection, Radioactive materials, Workers' compensation.

Text of the Rule

For the reasons discussed in the preamble, the Department of Health and Human Services proposes to amend 42 CFR to add part 81 to read as follows:

PART 81—GUIDELINES FOR DETERMINING PROBABILITY OF CAUSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000

Subpart A—Introduction

Sec.

- 81.0 Background.
81.1 Purpose and authority.
81.2 Provisions of EEOICPA concerning this rule.

Subpart B—Definitions

- 81.4 Definition of terms used in this rule.

Subpart C—Data Required To Estimate Probability of Causation

- 81.5 Use of personal and medical information.
81.6 Use of radiation dose information.

Subpart D—Requirements for Risk Models Used To Estimate Probability of Causation

- 81.10 Use of cancer risk assessment models in NIOSH-IREP.
81.11 Use of uncertainty analysis in NIOSH-IREP.

Subpart E—Guidelines To Estimate Probability of Causation

- 81.20 Required use of NIOSH-IREP.
81.21 Cancers requiring the use of NIOSH-IREP.
81.22 General guidelines for use of NIOSH-IREP.
81.23 Guidelines for cancers for which primary site is unknown.
81.24 Guidelines for leukemia.
81.25 Guidelines for claims involving two or more primary cancers.
81.30 Non-radiogenic cancers.
Appendix A to Part 81—Glossary of ICD-9 codes and their cancer descriptions

Authority: 42 U.S.C. 7384n; E.O. 13179, 65 FR 77487.

Subpart A—Introduction

§ 81.0 Background.

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA), Pub. L. 106-398, provides for the payment of compensation benefits to covered employees and, where applicable, survivors of such employees, of the United States Department of Energy, its predecessor agencies and certain of its contractors and subcontractors. Among the types of illnesses for which compensation may be provided are cancers. There are two categories of covered employees with cancer under EEOICPA for whom compensation may be provided. The regulations that follow under this part apply only to the category of employees

described under paragraph (a) of this section.

(a) One category is employees with cancer for whom probability of causation must be estimated or determined, as required under 20 CFR 30.115.

(b) The second category is members of the *Special Exposure Cohort* seeking compensation for a *specified cancer*, as defined under EEOICPA. The U.S. Department of Labor (DOL) which has primary authority for implementing EEOICPA, has promulgated regulations at 20 CFR 30.210 and 30.213 that identify current members of the *Special Exposure Cohort* and requirements for compensation. Pursuant to section 3626 of EEOICPA, the Secretary of HHS is authorized to add additional classes of employees to the *Special Exposure Cohort*.

§ 81.1 Purpose and authority.

(a) The purpose of this regulation is to establish guidelines DOL will apply to adjudicate cancer claims for covered employees seeking compensation for cancer, other than as members of the Special Exposure Cohort seeking compensation for a specified cancer. To award a claim, DOL must first determine that it is at least as likely as not that the cancer of the employee was related to radiation doses incurred by the employee in the performance of duty. These guidelines provide the procedures DOL must apply and identify the information DOL will use.

(b) Section 3623(b) of EEOICPA requires the President to promulgate these guidelines. Executive Order 13179 assigned responsibility for promulgating these guidelines to the Secretary of Health and Human Services.

§ 81.2 Provisions of EEOICPA concerning this rule.

EEOICPA imposes several general requirements concerning the development of these guidelines. It requires that the guidelines produce a determination as to whether it is at least as likely as not (a 50% or greater probability) that the cancer of the covered employee was related to radiation doses incurred by the employee in the performance of duty. It requires the guidelines be based on the radiation dose received by the employee, incorporating the methods of dose reconstruction to be established by HHS. It requires determinations be based on the upper 99 percent confidence interval (credibility limit) of the probability of causation in the radioepidemiological tables published under section 7(b) of the Orphan Drug Act (42 U.S.C. 241 note), as such tables

may be updated. EEOICPA also requires HHS consider the type of cancer, past health-related activities, the risk of developing a radiation-related cancer from workplace exposure, and other relevant factors. Finally, it is important to note EEOICPA does not include a requirement limiting the types of cancers to be considered radiogenic for these guidelines.

Subpart B—Definitions

§ 81.4 Definition of terms used in this rule.

(a) *Covered employee*: For purposes of this rule, an individual who is or was an employee of DOE, a DOE contractor or subcontractor, or an atomic weapons employer, and for whom DOL has requested HHS to perform a dose reconstruction.

(b) *Dose and dose rate effectiveness factor (DDREF)*: A factor applied to a risk model to modify the dose-risk relationship estimated by the model to account for the level of the dose and the rate at which the dose is incurred. As used in IREP, a DDREF value of greater than one implies that chronic or low doses are less carcinogenic per unit of dose than acute or higher doses.

(c) *Dose-response relationship*: A mathematical expression of the way that the risk of a biological effect (for example, cancer) changes with increased exposure to a potential health hazard (for example, ionizing radiation).

(d) *EEOICPA*: The Energy Employees Occupational Illness Compensation Program Act of 2000, Public Law 106-398, as amended.

(e) *Equivalent dose*: The absorbed dose in a tissue or organ multiplied by a radiation weighting factor to account for differences in the effectiveness of the radiation in inducing cancer.

(f) *External dose*: The portion of the equivalent dose that is received from radiation sources outside of the body.

(g) *Interactive RadioEpidemiological Program (IREP)*: A computer software program that uses information on the dose-response relationship, and specific factors such as a claimant's radiation exposure, gender, age at diagnosis, and age at exposure to calculate the probability of causation for a given pattern and level of radiation exposure.

(h) *Internal dose*: The portion of the equivalent dose that is received from radioactive materials taken into the body.

(i) *Inverse dose rate effect*: A phenomenon in which the protraction of an exposure to a potential health hazard leads to greater biological effect per unit of dose than the delivery of the same total amount in a single dose. An inverse dose rate effect implies that the

dose and dose rate effectiveness factor (DDREF) is less than one for chronic or low doses.

(j) *Linear energy transfer (LET)*: The average amount of energy transferred to surrounding body tissues per unit of distance the radiation travels through body tissues (track length). Low LET radiation is typified by gamma and x rays, which have high penetrating capabilities through various tissues, but transfer a relatively small amount of energy to surrounding tissue per unit of track length. High LET radiation includes alpha particles and neutrons, which have weaker penetrating capability but transfer a larger amount of energy per unit of track length.

(k) *NIOSH*: The National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, United States Department of Health and Human Services.

(l) *Non-radiogenic cancer*: A type of cancer that HHS has found not to be caused by radiation, for the purposes of this regulation.

(m) *Primary cancer*: A cancer defined by the original body site at which the cancer was incurred, prior to any spread (metastasis) to other sites in the body.

(n) *Probability of causation*: The probability or likelihood that a cancer was caused by radiation exposure incurred by a covered employee in the performance of duty. In statistical terms, it is the cancer risk attributable to radiation exposure divided by the sum of the baseline cancer risk (the risk to the general population) plus the cancer risk attributable to the radiation exposure.

(o) *Radioepidemiological tables*: Tables that allow computation of the probability of causation for various cancers associated with a defined exposure to radiation, after accounting for factors such as age at exposure, age at diagnosis, and time since exposure.

(p) *Relative biological effectiveness (RBE)*: A factor applied to a risk model to account for differences between the amount of cancer effect produced by different forms of radiation. For purposes of EEOICPA, the RBE is considered equivalent to the radiation weighting factor.

(q) *Risk model*: A mathematical model used under EEOICPA to estimate a specific probability of causation using information on radiation dose, cancer type, and personal data (e.g., gender, smoking history).

(r) *Secondary site*: A body site to which a primary cancer has spread (metastasized).

(s) *Specified cancer*: A term defined in section 3621(17) of EEOICPA and 20 CFR § 30.5(dd) that specifies types of

cancer that, pursuant to 20 CFR part 30, may qualify a member of the *Special Exposure Cohort* for compensation. It includes leukemia (other than chronic lymphocytic leukemia), multiple myeloma, non-Hodgkin's lymphoma, and cancers of the lung (other than carcinoma in situ diagnosed at autopsy), thyroid, male breast, female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, liver (not associated with cirrhosis or hepatitis), and bone. Pursuant to section 2403 of Pub. L. 107-20, this definition will include renal cancer effective October 1, 2001.

(t) *Uncertainty*: A term used in this rule to describe the lack of precision of a given estimate, the extent of which depends upon the amount and quality of the evidence or data available.

(u) *Uncertainty distribution*: A statistical term meaning a range of discrete or continuous values arrayed around a central estimate, where each value is assigned a probability of being correct.

(v) *Upper 99 percent confidence interval*: A term used in EEOICPA to mean credibility limit, the probability of causation estimate determined at the 99th percentile of the range of uncertainty around the central estimate of probability of causation.

Subpart C—Data Required To Estimate Probability of Causation

§ 81.5 Use of personal and medical information

Determining probability of causation may require the use of the following personal and medical information provided to DOL by claimants under DOL regulations 20 CFR part 30:

- (a) Year of birth.
- (b) Cancer diagnosis (by ICD-9 code) for primary and secondary cancers.
- (c) Date of cancer diagnosis.
- (d) Gender.
- (e) Race/ethnicity (if the claim is for skin cancer or a secondary cancer for which skin cancer is a likely primary cancer).
- (f) Smoking history (if the claim is for lung cancer or a secondary cancer for which lung cancer is a likely primary cancer).

§ 81.6 Use of radiation dose information.

Determining probability of causation will require the use of radiation dose information provided to DOL by the National Institute for Occupational Safety and Health (NIOSH) under HHS regulations 42 CFR part 82. This information will include annual dose estimates for each year in which a dose

was incurred, together with uncertainty distributions associated with each dose estimate. Dose estimates will be distinguished by type of radiation (low linear energy transfer (LET), protons, neutrons, alpha, low-energy x-ray) and by dose rate (acute or chronic) for external and internal radiation dose.

Subpart D—Requirements for Risk Models Used To Estimate Probability of Causation

§ 81.10 Use of cancer risk assessment models in NIOSH IREP.

(a) The risk models used to estimate probability of causation for covered employees under EEOICPA will be based on risk models updated from the 1985 NIH radioepidemiological tables. These 1985 tables were developed from analyses of cancer mortality risk among the Japanese atomic bomb survivor cohort. The National Cancer Institute (NCI) and Centers for Disease Control and Prevention (CDC) are updating the tables, replacing them with a sophisticated analytic software program. This program, the *Interactive RadioEpidemiological Program (IREP)*, models the *dose-response relationship* between ionizing radiation and 33 cancers using morbidity data from the same Japanese atomic bomb survivor cohort. In the case of thyroid cancer, radiation risk models are based on a pooled analysis of several international cohorts.¹

(b) NIOSH will change the risk models in IREP, as needed, to reflect the radiation exposure and disease experiences of employees covered under EEOICPA, which differ from the experiences of the Japanese atomic bomb survivor cohort. Changes will be incorporated in a version of IREP named NIOSH-IREP, specifically designed for adjudication of claims under EEOICPA. Possible changes in IREP risk models include the following:

- (1) Addition of risk models to IREP as needed for claims under EEOICPA (e.g., bone cancer, malignant melanoma and other skin cancers).
- (2) Modification of IREP risk models to incorporate radiation exposures unique to employees covered by EEOICPA (e.g., radon and low energy x rays from employer-required medical screening programs, adjustment of *relative biological effectiveness* distributions based on neutron energy).
- (3) Modification of IREP risk models to incorporate new understanding of radiation-related cancer effects relevant

¹ Ron E. Lubin JH, Shore RE, et al. "Thyroid cancer after exposure to external radiation: a pooled analysis of seven studies." *Radiat. Res.* 141:259-277, 1995.

to employees covered by EEOICPA (e.g., incorporation of inverse dose-rate relationship between high LET radiation exposures and cancer; removal of the low-dose effect reduction factor for acute exposures).

(4) Modification of IREP risk models to incorporate temporal, race and ethnicity-related differences in the frequency of certain cancers occurring generally among the U.S. population.

(5) Modifications of IREP to facilitate improved evaluation of the uncertainty distribution for the probability of causation for claims based on two or more primary cancers.

§ 81.11 Use of uncertainty analysis in NIOSH-IREP.

(a) EEOICPA requires use of the uncertainty associated with the probability of causation calculation, specifically requiring the use of the upper 99% confidence interval estimate of the probability of causation estimate. As described in the NCI document², uncertainty from several sources is incorporated into the probability of causation calculation performed by IREP. These sources include uncertainties in estimating: Radiation dose incurred by the covered employee; the radiation dose-cancer relationship (statistical uncertainty in the specific cancer risk model); the extrapolation of risk (risk transfer) from the Japanese to the U.S. population; differences in the amount of cancer effect caused by different radiation types (relative biological effectiveness or RBE); the relationship between the rate at which a radiation dose is incurred and the level of cancer risk produced (dose and dose rate effectiveness factor or DDREF); and, the role of non-radiation risk factors (such as smoking history).

(b) NIOSH-IREP will operate according to the same general protocol as IREP for the analysis of uncertainty. It will address the same possible sources of uncertainty affecting probability of causation estimates, and in most cases will apply the same assumptions incorporated in IREP risk models. Different procedures and assumptions will be incorporated into NIOSH-IREP as needed, according to the criteria outlined under § 81.10.

Subpart E—Guidelines To Estimate Probability of Causation

§ 81.20 Required use of NIOSH-IREP.

(a) NIOSH-IREP is an online interactive software program for estimating probability of causation for covered employees seeking compensation for cancer under EEOICPA, other than as members of the *Special Exposure Cohort* seeking compensation for a *specified cancer*.

(b) DOL is required to use NIOSH-IREP to estimate probability of causation for all cancers, as identified under §§ 81.21 and 81.23.

§ 81.21 Cancers requiring the use of NIOSH-IREP.

(a) DOL will calculate probability of causation for all cancers, except Chronic Lymphocytic Leukemia as provided under § 81.30, using NIOSH-IREP.

(b) Carcinoma in situ (ICD-9 codes 230-234), neoplasms of uncertain behavior (ICD-9 codes 235-238), and neoplasms of unspecified nature (ICD-9 code 239) are assumed to be malignant, for purposes of estimating probability of causation.

(c) All secondary and unspecified cancers of the lymph node (ICD-9 code 196) shall be considered secondary cancers (cancers resulting from

metastasis of cancer from a primary site). For claims identifying cancers of the lymph node, Table 1 in § 81.23 provides guidance for assigning a primary site and calculating probability of causation using NIOSH-IREP.

§ 81.22 General guidelines for use of NIOSH-IREP.

DOL will use procedures specified in the NIOSH-IREP *Operating Guide* to calculate probability of causation estimates under EEOICPA. The guide provides current, step-by-step instructions for the operation of IREP. The procedures include entering personal, diagnostic, and exposure data; setting/confirming appropriate values for variables used in calculations; conducting the calculation; and, obtaining, evaluating, and reporting results.

§ 81.23 Guidelines for cancers for which primary site is unknown.

(a) In claims for which the primary cancer site cannot be determined, but a site of metastasis is known, DOL will calculate probability of causation estimates for various likely primary sites. Table 1 of this section indicates the primary cancer site(s) DOL will use in NIOSH-IREP when the primary cancer site is unknown:

Table 1—Primary Cancer Sites

Primary cancers (ICD-9 codes³) for which probability of causation is to be calculated, if only a secondary cancer site is known. "M" indicates cancer site should be used for males only, and "F" indicates cancer site should be used for females only. A glossary of cancer descriptions for each ICD-9 code is provided in appendix A to this part.

Secondary cancer (ICD-9 code)	ICD-9 code of likely primary cancers
Lymph nodes of head, face and neck (196.0)	141, 142 (M), 146 (M), 149 (F), 161 (M), 162, 172, 173, 174 (F), 193 (F)
Intrathoracic lymph nodes (196.1)	150 (M), 162, 174 (F)
Intra-abdominal lymph nodes (196.2)	150 (M), 151 (M), 153, 157 (F), 162, 174 (F), 180 (F), 185 (M), 189, 202 (F)
Lymph nodes of axilla and upper limb, (196.3)	162, 172, 174 (F)
Inguinal and lower, limb lymph nodes, (196.5)	154 (M), 162, 172, 173 (F), 187 (M)
Intrapelvic lymph nodes (196.6)	153 (M), 154 (F), 162 (M), 180 (F), 182 (F), 185 (M), 188
Lymph nodes of multiple sites, (196.8)	150 (M), 151 (M), 153 (M), 162, 174 (F)
Lymph nodes, site unspecified (196.9)	150 (M), 151, 153, 162, 172, 174 (F), 185 (M)
Lung (197.0)	153, 162, 172 (M), 174 (F), 185 (M), 188 (M), 189
Mediastinum (197.1)	150 (M), 162, 174 (F)
Pleura (197.2)	150 (M), 153 (M), 162, 174 (F), 183 (F), 185 (M), 189 (M)
Other respiratory Organs (197.3)	150, 153 (M), 161, 162, 173 (M), 174 (F), 185 (M), 193
Small intestine, including duodenum (197.4)	152, 153, 157, 162, 171, 172 (M), 174 (F), 183 (F), (f), 183 (f), 189 (M)
Large intestine and rectum (197.5)	153, 154, 162, 174 (F), 183 (F), 185 (M)
Retropentoneum and peritoneum (197.6)	151, 153, 154 (M), 157, 162 (M), 171, 174 (F), 182 (F), 183 (F)

² Draft Report of the NCI-CDC Working Group to Revise the 1985 NIH Radioepidemiological Tables, May 31, 2000, p. 17-18, p. 22-23.

³ The International Classification of Diseases Clinical Modification (9th Revision) Volume I&II. [1991] Department of Health and Human Services

Publication No. (PHS) 91-1260, U.S. Government Printing Office, Washington, D.C.

Secondary cancer (ICD-9 code)	ICD-9 code of likely primary cancers
Liver, specified as secondary (197.7)	151 (M), 153, 154 (M), 157, 162, 174 (F)
Other digestive organs (197.8)	150 (M), 151, 153, 157, 162, 174 (F), 185 (M)
Kidney (198.0)	153, 162, 174 (F), 180 (F), 185 (M), 188, 189, 202 (F)
Other urinary organs (198.1)	153, 174 (F), 180 (F), 183 (F), 185 (M), 188, 189 (F)
Skin (198.2)	153, 162, 171 (M), 172, 173 (M), 174 (F), 189 (M)
Brain and spinal cord (198.3)	162, 172 (M), 174 (F)
Other parts of nervous system, (198.4)	162, 172 (M), 174 (F), 185 (M), 202
Bone and bone marrow (198.5)	162, 174 (F), 185 (M)
Ovary (198.6)	153 (F), 174 (F), 183 (F)
Suprarenal gland (198.7)	153 (F), 162, 174 (F)
Other specified sites (198.8)	153, 162, 172 (M), 174 (F), 183 (F), 185 (M), 188 (M)

(b) DOL will select the site producing the highest estimate for probability of causation to adjudicate the claim.

§ 81.24 Guidelines for leukemia.

(a) For claims involving leukemia, DOL will calculate one or more probability of causation estimates from among three of the four alternate leukemia risk models included in NIOSH-IREP, as specified in the NIOSH-IREP Operating Guide. These include: "Leukemia, all types except CLL" (ICD-9 codes: 204-208, except 204.1), "acute lymphocytic leukemia" (ICD-9 code: 204.0), and "acute myelogenous leukemia" (ICD-9 code: 205.0).

(b) For leukemia claims in which DOL calculates multiple probability of causation estimates, as specified in the NIOSH-IREP Operating Guide, the probability of causation estimate DOL assigns to the claim will be based on the leukemia risk model producing the highest estimate for probability of causation.

§ 81.25 Guidelines for claims including two or more primary cancers.

(a) For claims including two or more primary cancers, DOL will use NIOSH-IREP to calculate the estimated probability of causation for each cancer individually. Then DOL will perform the following calculation using the probability of causation estimates produced by NIOSH-IREP:

Equation 1

$$\text{Calculate: } 1 - \{ [1 - PC_1] \times [1 - PC_2] \times \dots \times [1 - PC_n] \} = PC_{\text{total}}$$

Where PC₁ is the probability of causation for one of the primary cancers identified in the claim, PC₂ is the probability of causation for a second primary cancer identified in the claim, and PC_n is the probability of causation for the nth primary cancer identified in the claim. PC_{total} is the probability that at least one of the primary cancers (cancers 1 through "n") was caused by the radiation dose estimated for the claim when Equation 1 is evaluated

based on the joint distribution of PC₁, * * *, PC_n.⁴

§ 81.30 Non-radiogenic cancers.

The following cancers are considered non-radiogenic for the purposes of EEOICPA and this part. DOL will assign a probability of causation of zero to the following cancers: Chronic lymphocytic leukemia (ICD-9 code: 204.1).

Appendix A to Part 81—Glossary of ICD-9 Codes and Their Cancer Descriptions

ICD-9 code	Cancer description
140	Malignant neoplasm of lip.
141	Malignant neoplasm of tongue.
142	Malignant neoplasm of major salivary glands.
143	Malignant neoplasm of gum.
144	Malignant neoplasm of floor of mouth.
145	Malignant neoplasm of other and unspecified parts of mouth.
146	Malignant neoplasm of oropharynx.
147	Malignant neoplasm of nasopharynx.
148	Malignant neoplasm of hypopharynx.
149	Malignant neoplasm of other and ill-defined sites within the lip, oral cavity, and pharynx.
150	Malignant neoplasm of esophagus.
151	Malignant neoplasm of stomach.
152	Malignant neoplasm of small intestine, including duodenum.
153	Malignant neoplasm of colon.
154	Malignant neoplasm of rectum, rectosigmoid junction, and anus.

⁴ Evaluating Equation 1 based on the individual upper 99th percentiles of PC₁, * * *, PC_n approximates the upper 99th percentile of PC_{total} whenever PC₁, * * *, PC_n are highly related, e.g., when a common dose-reconstruction is the only non-negligible source of uncertainty in the individual PC_i's. However, this approximation can overestimate it if other sources of uncertainty contribute independently to the PC_i, * * *, PC_n, whereas treating the joint distribution as fully independent could substantially underestimate the upper 99th percentile of PC_{total} whenever the individual PC_i's are positively correlated.

ICD-9 code	Cancer description
155	Malignant neoplasm of liver and intrahepatic bile ducts.
156	Malignant neoplasm of gall bladder and extrahepatic bile ducts.
157	Malignant neoplasm of pancreas.
158	Malignant neoplasm of retroperitoneum and peritoneum.
159	Malignant neoplasm of other and ill-defined sites within the digestive organs and peritoneum.
160	Malignant neoplasm of nasal cavities, middle ear, and accessory sinuses.
161	Malignant neoplasm of larynx.
162	Malignant neoplasm of trachea, bronchus and lung.
163	Malignant neoplasm of pleura.
164	Malignant neoplasm of thymus, heart, and mediastinum.
165	Malignant neoplasm of other and ill-defined sites within the respiratory system and intrathoracic organs.
170	Malignant neoplasm of bone and articular cartilage.
171	Malignant neoplasm of connective and other soft tissue.
172	Malignant melanoma of skin.
173	Other malignant neoplasms of skin.
174	Malignant neoplasm of female breast.
175	Malignant neoplasm of male breast.
179	Malignant neoplasm of uterus, part unspecified.
180	Malignant neoplasm of cervix uteri.
181	Malignant neoplasm of placenta.
182	Malignant neoplasm of body of uterus.
183	Malignant neoplasm of ovary and other uterine adnexa.
184	Malignant neoplasm of other and unspecified female genital organs.
185	Malignant neoplasm of prostate.
186	Malignant neoplasm of testis.
187	Malignant neoplasm of penis and other male genital organs.
188	Malignant neoplasm of urinary bladder.

ICD-9 code	Cancer description
189	Malignant neoplasm of kidney and other and unspecified urinary organs.
190	Malignant neoplasm of eye.
191	Malignant neoplasm of brain.
192	Malignant neoplasm of other and unspecified parts of nervous system.
193	Malignant neoplasm of thyroid gland.
194	Malignant neoplasm of other endocrine glands and related structures.
195	Malignant neoplasm of other and ill-defined sites.
196	Secondary and unspecified malignant neoplasm of the lymph nodes.
197	Secondary malignant neoplasm of the respiratory and digestive organs.
198	Secondary malignant neoplasm of other tissue and organs.
199	Malignant neoplasm without specification of site.
200	Lymphosarcoma and reticulosarcoma.
201	Hodgkin's disease.
202	Other malignant neoplasms of lymphoid and histiocytic tissue.
203	Multiple myeloma and other immunoproliferative neoplasms.
204	Lymphoid leukemia.
205	Myeloid leukemia.
206	Monocytic leukemia.
207	Other specified leukemia.
208	Leukemia of unspecified cell type.

¹ The International Classification of Diseases Clinical Modification (9th Revision) Volume I&II. [1991] Department of Health and Human Services Publication No. (PHS) 91-1260, U.S. Government Printing Office, Washington, DC.

Dated: September 21, 2001.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 01-24878 Filed 10-4-01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 82

RIN 0920-ZA00

Methods for Radiation Dose Reconstruction Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Interim Final Rule With Request for Comments

AGENCY: Department of Health and Human Services.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule implements select provisions of the Energy Employees Occupational Illness Compensation Program Act of 2000 ("EEOICPA" or "Act"). The Act requires the promulgation of methods, in the form of regulations, for estimating the dose levels of ionizing radiation incurred by workers in the performance of duty for nuclear weapons production programs of the Department of Energy and its predecessor agencies. These "dose reconstruction" methods will be applied by the National Institute for Occupational Safety and Health, which is responsible for producing the radiation dose estimates that the U.S. Department of Labor will use in adjudicating certain cancer claims under the Act.

DATES: *Effective Date:* This interim final rule is effective October 5, 2001. *Compliance Dates:* Affected parties are not required to comply with the information collection requirements in § 82.10 until the Department of Health and Human Services publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

Comments: The Department invites written comments on the interim final rule from interested parties. Comments on the rule must be received by November 5, 2001. Comments on the collection of information requirements should be received by October 22, 2001.

ADDRESSES: Address written comments on the interim final rule to the NIOSH Docket Officer. Submit comments electronically by e-mail to NIOCINDOCKET@CDC.GOV. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. Alternatively, submit printed comments to the following address: NIOSH Docket Office, Robert A. Taft Laboratories; M/S C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

Written comments on the collection of information requirements should be sent to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational

Safety and Health, 4676 Columbia Parkway, MS-R45, Cincinnati, OH 45226. Telephone 513-841-4498 (this is not a toll-free number). Information requests may also be submitted by e-mail to OCAS@CDC.GOV.

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, arguments, recommendations, and data. Comments are invited on any topic related to this rulemaking. Some generic topics for comment include the following questions:

(1) Does the interim rule make appropriate use of current science for conducting dose reconstructions to be used in an occupational illness compensation program?

(2) Does the interim rule appropriately balance the potential precision of dose reconstructions and the necessary efficiency of the dose reconstruction process?

(3) Does the interim rule implement an appropriate process for involving the claimant in the dose reconstruction?

Comments should identify the author(s), return address, and phone number, in case clarification is needed. Comments can be submitted by e-mail to: NIOCINDOCKET@CDC.GOV. If submitting comments by e-mail, they should be provided as a Microsoft Word or Word Perfect file attachment. Printed comments can be submitted to the NIOSH Docket Office at the address above. The Secretary will consider all communications received on or before the closing date for comments before taking action on the interim final rule. All comments submitted will be available for examination in the Rule Docket both before and after the closing date for comments. A report summarizing each substantive public contact with personnel involved in this rulemaking will be filed in the docket. An electronic docket containing all comments submitted by e-mail will be available over the Internet from the National Institute for Occupational Safety and Health (NIOSH) homepage at www.cdc.gov/niosh.

II. Final Rule

The Department of Health and Human Services ("HHS") expects to issue a final rule within six months of publication of this interim final rule. Upon publication of the final rule, dose reconstructions completed under this interim final rule will be reviewed and revised, as necessary, to conform with any substantive changes that might be included in the final rule.

III. Background

A. Statutory Authority

The Energy Employees Occupational Illness Compensation Program Act of 2000 ("EEOICPA"), Public Law 106-398, 114 Stat. 1654, 1654A-1231 (October 30, 2000), was enacted as Title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. EEOICPA established a compensation program to provide a lump sum payment of \$150,000 and medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors, and subcontractors. This law also provided for payment of compensation to certain survivors of covered employees.

EEOICPA instructed the President to designate one or more federal agencies to carry out the compensation program. Pursuant to this statutory provision, the President issued Executive Order 13179, titled Providing Compensation to America's Nuclear Weapons Workers, which assigned primary responsibility for administering the compensation program to the Department of Labor ("DOL"). 65 FR 77487 (Dec. 7, 2000). DOL published an interim final rule governing DOL's administration of EEOICPA on May 25, 2001 (see 66 FR 28948).

The executive order directed HHS to perform several technical and policymaking roles in support of the DOL program:

(1) HHS is to develop methods to estimate radiation doses ("dose reconstruction") for certain individuals with cancer applying for benefits under the DOL program. These methods are the subject of this rule. HHS is also to apply these methods to conduct the program of dose reconstructions required by EEOICPA. This program will be delegated to the National Institute for Occupational Safety and Health ("NIOSH"), an institute of the Centers for Disease Control and Prevention.

(2) HHS is also to develop guidelines to be used by DOL to assess the likelihood that an employee with cancer developed that cancer as a result of exposure to radiation in performing his or her duties at a DOE facility or atomic weapons facility. These guidelines are being published simultaneously with this interim final rule as a notice of proposed rulemaking under 42 CFR part 81 in this issue of the **Federal Register**.

(3) HHS is to staff the Advisory Board on Radiation and Worker Health and provide it with administrative and other necessary support services. The Board, a federal advisory committee, will advise HHS in implementing its roles under EEOICPA described here.

(4) Finally, HHS is to develop and apply procedures for considering petitions by classes of employees to be added to the *Special Exposure Cohort* established under EEOICPA. Employees included in the *Special Exposure Cohort* who have a specified cancer and meet other conditions, as defined by DOL regulations (66 FR 28948), qualify for compensation under EEOICPA. HHS procedures for considering *Special Exposure Cohort* petitions are under development. HHS expects to issue these procedures within the next six months.

As provided for under section 3625 of EEOICPA, HHS is implementing its responsibilities with the assistance of NIOSH.

B. What Legal Requirements Are Specified by EEOICPA for Dose Reconstruction?

Section 3623(d) of EEOICPA requires that HHS establish, by regulation, methods for arriving at reasonable estimates of the radiation doses incurred by covered employees seeking compensation for cancer, other than as members of the *Special Exposure Cohort* seeking compensation for a *specified cancer*. These methods will be applied to estimate radiation doses for the following covered employees seeking compensation for cancer under EEOICPA: (1) An employee who was not monitored for exposure to radiation at a DOE or Atomic Weapons Employer facility; (2) an employee who was monitored inadequately for exposure to radiation at such a facility; or (3) an employee whose records of exposure to radiation at such facility are missing or incomplete.

EEOICPA requires the Advisory Board on Radiation and Worker Health to independently review the methods established by this rule and to verify a reasonable sample of dose reconstructions established under these methods. The Advisory Board is a federal advisory committee established and appointed by the President to advise HHS on its major responsibilities under EEOICPA.

Sections 3623(e) and 3626(c) of EEOICPA require that DOE provide HHS with relevant information on worker radiation exposures necessary for dose reconstructions and require DOE to inform covered employees with cancer of the results of their dose

reconstructions. NIOSH, which will be conducting the dose reconstructions, will inform covered employees of the results of these dose reconstructions on behalf of DOE.

Subject to provisions of the Privacy Act (5 U.S.C. 552a), HHS will also make available to researchers and the general public information on the assumptions, methodology, and data used in estimating radiation doses, as required by Section 3623(e)(2) of EEOICPA.

Finally, HHS notes that EEOICPA does not authorize the establishment of new radiation protection standards through the promulgation of these methods, and these methods do not constitute such new standards.

C. What Is the Purpose of Dose Reconstruction?

Dose reconstructions are used to estimate the radiation doses to which individual workers or groups of workers have been exposed, particularly when radiation monitoring is unavailable, incomplete, or of poor quality. Originally dose reconstructions were conducted for research on the health effects of exposure to radiation. In recent decades, dose reconstruction has become an integral component of radiation illness compensation programs in the United States and internationally.

D. How Are Radiation Doses Reconstructed?

The procedures and level of effort involved in dose reconstructions depend in part on the quantity and quality of available dose monitoring information, the conditions under which radiation exposure arose, and the forms of radiation to which the individual was exposed. If individuals for whom dose estimates are needed were monitored using present day technology and received only external radiation doses, dose reconstruction could be very simple. It might only require summing the radiation doses recorded from radiation badges and adding estimated potential "missed" doses resulting from the limits of detection of monitoring badges.

Dose reconstruction can require extensive research and analysis. Such work is required if radiation doses were not monitored or there is uncertainty about the monitoring methods involved; if there was potential for internal doses through the ingestion, inhalation or absorption of radioactive materials; or if the processes and circumstances involved in the radiation exposures were complex. For the most complex dose reconstructions, research and analyses may include determining or

assuming specific characteristics of the monitoring procedures; identifying events or processes that were unmonitored; identifying the types and quantities of radioactive materials involved; evaluating production processes and safety procedures employed; identifying the locations and activities of exposed persons; identifying comparable exposure circumstances for which data is available to make assumptions; and conducting a variety of complex analyses to interpret the data compiled or estimated.

E. How is Dose Reconstruction Conducted in a Compensation Program?

An additional, critical factor affecting how doses are reconstructed is the amount of time available. For health research studies dose reconstructions may take from months to years to complete. In compensation programs, however, a balance must be struck between efficiency and precision. Section 3611 of EEOICPA specifically states that one of the purposes of the compensation program is to provide for "timely" compensation. As applied under EEOICPA, dose reconstruction must rely on information that can be developed on a timely basis and on carefully developed assumptions.

When conducting dose reconstruction for a compensation program, our primary concern will be to ensure the assumptions used to estimate doses are fair, consistent, and well grounded in the best available science. To address fairness, the Defense Threat Reduction Agency ("DTRA"), which conducts dose reconstructions for veterans and Department of Defense civilian personnel who participated in U.S. atmospheric nuclear testing and in the occupation forces of Hiroshima and Nagasaki, applies certain assumptions that err reasonably on the side of overestimating exposures (see 32 CFR part 218). These assumptions substitute for more detailed information that would be time-consuming and costly to develop. HHS will take an approach similar to that of DTRA by using reasonable, fair, and scientifically based assumptions as substitutes for additional research and analysis to achieve an efficient dose reconstruction process.

F. How Will Dose Reconstruction Methods Under EEOICPA Differ From Dose Reconstruction for Veterans?

The major differences for the HHS methods for dose reconstructions arise from characteristics that distinguish the radiation exposure experiences of nuclear weapons production workers

from those of veterans. Whereas veterans were primarily exposed to external sources of radiation over brief periods in acute doses, employees covered by EEOICPA frequently may have received both acute and chronic exposures to internal and external radiation over periods as long as three to four decades. Further, nuclear weapons production workers experienced more diverse exposures and circumstances of exposure, on an individual basis and as a group than did veterans. As a result, many HHS dose reconstructions will be more complex than those conducted by DTRA, making it necessary that HHS place a high premium on any efficiencies that can be achieved.

Addressing the need for efficiency, HHS is establishing a dose reconstruction process that limits the work performed in cases where it is evident the outcome of the compensation claim will be unaffected. HHS will rely on less detailed or precise estimates for claims for which compensation would clearly be due based on the more limited dose reconstruction, and for claims for which additional work clearly would not result in compensation. In the former case, if it is evident from limited dose reconstruction that the estimated cumulative dose is sufficient to qualify the claimant for compensation, no additional work will be performed. In the latter case, limited dose reconstructions will be conducted only for claims for which it is evident that further research and dose reconstruction is extremely unlikely to produce a compensable level of radiation dose, because the use of worst-case assumptions does not produce a compensable level of radiation dose. In these latter cases, the decisive factors that result in NIOSH deciding to limit the dose reconstruction process will be clearly set forth in the draft of the dose reconstruction results reported to the claimant under § 82.25, and in the dose reconstruction results reported to the claimant under § 82.26.

A second important aspect of the HHS dose reconstruction process is that it will involve interaction with the covered employee or survivor. NIOSH will use information provided by the claimant to evaluate the completeness and adequacy of dose information available, to locate additional exposure or dose-related information, and to estimate unmonitored doses.

G. How Will HHS Incorporate Scientific Methods Established by the Radiation Safety Scientific Community in Internal Dose Estimation Under EEOICPA?

The methods for calculating internal dose in this rule use current models published by the International Commission on Radiological Protection (ICRP). Specifically, NIOSH will use the new ICRP respiratory tract model for assessing doses due to inhalation of radioactive particles.¹ In addition, NIOSH will use the new biokinetic models for the radionuclides contained in publications 56,² 67³ and 69⁴ in place of those described in previous ICRP publications. These models provide the most widely accepted methods for mathematically describing the uptake, transport and retention of radionuclides in the body.

H. What Elements Underlying the Dose Reconstruction Process Are Expected to Change With Scientific Progress?

ICRP periodically updates the models used to evaluate internal doses, based on new research on the metabolic properties of radioactive materials (radionuclides). These ICRP updates reflect the current state of scientific knowledge on the uptake, transport, and retention of radionuclides in the human body.

In addition, technological advances in the areas of retrospective detection of radiation exposure or radiation exposure and dose biomarkers (detectable changes in human tissues and/or physiologic processes resulting from radiation exposure) may make it possible to add new analyses to the dose reconstruction process in the future.

As outlined below, NIOSH will address the need to update the scientific elements underlying dose reconstructions in a process that permits input from the public.

¹ International Commission on Radiological Protection (ICRP). 1994. Human Respiratory Model for Radiological Protection. ICRP Publication 66, Annals of the ICRP 24(1-4). Elsevier Scientific Ltd., Oxford.

² International Commission on Radiological Protection (ICRP). 1989. Age Dependent Doses to Members of the Public from Intakes of Radionuclides: Part 1. ICRP Publication 56, Annals of the ICRP 20(2). Pergamon Press, Oxford.

³ International Commission on Radiological Protection (ICRP). 1993. Age Dependent Doses to Members of the Public from Intakes of Radionuclides: Part 2. ICRP Publication 57, Annals of the ICRP 23(2/3). Pergamon Press, Oxford.

⁴ International Commission on Radiological Protection (ICRP). 1995. Age Dependent Doses to Members of the Public from Intakes of Radionuclides: Part 3: Ingestion Dose Coefficients. ICRP Publication 69, Annals of the ICRP 25(1). Elsevier Scientific Ltd., Oxford.

I. How Will NIOSH Inform the Public of Any Plans to Change Scientific Elements Underlying the Dose Reconstruction Process to Maintain Methods Reasonably Current With Scientific Progress?

Periodically, NIOSH will publish a notice in the **Federal Register** notifying the public of plans to change scientific elements underlying the dose reconstruction process under EEOICPA to reflect scientific progress. Notice will include a summary of the planned changes and the expected completion date for such changes.

J. How Can the Public Recommend Changes to Scientific Elements Underlying the Dose Reconstruction Process, as Scientific Progress Makes Substantive Improvements in Methods Possible?

At any time, the public can submit written recommendations to NIOSH for changes to scientific elements underlying the dose reconstruction process, based on relevant new research findings and technological advances. Recommendations will be provided to the Advisory Board on Radiation and Worker Health and may be addressed at a public meeting of the Advisory Board, with notification provided to the source of the recommendations. Recommendations should be addressed to: Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS-R45, Cincinnati, Ohio 45226.

The public can also submit recommendations by e-mail. Instructions will be provided on the NIOSH Internet homepage at www.cdc.gov/niosh.

K. How Will NIOSH Make Changes in Scientific Elements Underlying the Dose Reconstruction Process, Based on Scientific Progress?

Proposed changes will be presented to the Advisory Board on Radiation and Worker Health prior to implementation. These proposed changes will be summarized in the notice of the board meeting published in the **Federal Register**. The public will have the opportunity to comment on proposed changes at the meeting of the Advisory Board and/or in written comments submitted for this purpose. NIOSH will fully consider the comments of the Advisory Board and of the public before deciding upon any changes.

L. How Will NIOSH Inform the Public of Changes to the Scientific Elements Underlying the Dose Reconstruction Process?

NIOSH will publish a notice in the **Federal Register** informing the public of changes and the rationale for the changes. This notice will also provide a summary of the recommendations and comments received from the Advisory Board and the public, as well as responses to the comments.

IV. History of Rule Development

A. What Experience Does HHS Have in Dose Reconstruction?

NIOSH, an Institute of the Centers for Disease Control and Prevention, has conducted a program of federally sponsored health research on DOE employees since 1991. Dose reconstructions are an integral element of this research. In fact, NIOSH will draw substantially on records it has developed through its research on DOE employees in conducting the program of dose reconstructions under EEOICPA.

B. Did HHS Consult With Outside Experts and Interested Parties During the Development of This Notice of Proposed Rulemaking?

HHS consulted individually with a wide variety of experts and interested parties to help ensure the quality and practicality of these methods. Reports on these consultations are available in the regulatory docket for public review. While these consultations provided less opportunity for initial public input than generally desired for rulemaking, they served the purpose of ensuring that this interim final rule was developed with reasonable information on the points of view of individual experts and members of public directly affected by the rule. HHS will fully consider comments from the public and from the Advisory Board on Radiation and Worker Health in producing a final rule.

V. Summary of the Interim Rule

Congress, in enacting EEOICPA, created a new Energy Employees Occupational Illness Compensation Program to ensure an efficient, uniform, and adequate compensation system for certain employees. Under Executive Order 13179, the President assigned primary responsibility for administering the program to DOL. The President assigned various technical responsibilities for policymaking and assistance to HHS. Included among these is promulgation of this rule to establish methods NIOSH will apply to conduct dose reconstructions for covered employees seeking

compensation for cancer, other than as members of the Special Exposure Cohort seeking compensation for a specified cancer. NIOSH dose reconstructions will be used by DOL to estimate the probability that the cancers of these covered employees were related to radiation exposures at covered facilities.

Introduction

Sections 82.0 and 82.1 briefly describe how these regulations relate to DOL authorities under EEOICPA and the assignment of authority for these regulations to HHS. In § 82.2, HHS provides a general introduction to dose reconstruction and describes the hierarchy of information to be relied upon for dose reconstructions. This hierarchy gives preference to individual radiation monitoring data, if complete and adequate, and provides for use of information on the workplace environment and radiation exposures for interpretation and as a secondary source of data, and provides for use of reasonable and scientific assumptions in lieu of certain data when the workplace environment cannot be fully characterized. HHS believes this approach would give due weight to the potentially most precise data, but would take into account the limitations of such data and its availability.

Section 82.3 summarizes the specific provisions of EEOICPA directing HHS in the development of this regulation and NIOSH in the conduct of dose reconstructions under this regulation. Section 82.4 describes how DOL will use the results of NIOSH dose reconstructions for the adjudication of claims.

Definitions

Section 82.5 defines the principal terms used in this part. It includes terms specifically defined in EEOICPA that, for the convenience of the reader of this part, are repeated in this section. It clarifies the definition of radiation. Section 3621(16) of EEOICPA defines radiation as ionizing radiation in the form of alpha or beta particles, neutrons, gamma rays, or accelerated ions or subatomic particles from accelerator machines. The rule elaborates upon this definition, specifically including x rays, protons and other particles capable of producing ions in the body, which are components of ionizing radiation exposures experienced by nuclear weapons production workers. In addition, for clarity the definition in this rule explicitly excludes non-ionizing forms of radiation, such as radio-frequency radiation and microwaves.

Dose Reconstruction Process

Section 82.10 provides an overview of the major elements of the dose reconstruction process that NIOSH will implement under EEOICPA. It describes the steps in the process, the sources and types of information that will be collected and analyzed, the role of the claimants in developing a factual basis for dose reconstruction, the types of analyses, and criteria that will direct NIOSH to ensure dose reconstructions produce reasonable dose estimates and serve claimants efficiently.

NIOSH will obtain available monitoring data and information on the workplace environment and practices from DOE and other sources. NIOSH will interview the claimant to obtain information and to report to the claimant on dose reconstruction results and the methods and data used to produce the results. NIOSH will take measures to produce results as efficiently as possible, so that adjudication of the claim by DOL can be resumed and completed in a timely fashion. These measures include limiting the dose reconstruction process to use less detailed or precise estimates for claims for which it is evident that further research and analysis will not affect the outcome of the claim.

For example, under these proposed regulations, if it is evident from the record of external radiation dose alone that an employee incurred a sufficiently high level of dose to have the claim accepted by DOL for compensation (a dose that would result in a probability of causation of 50% or higher), NIOSH would conclude the process without continuing with time consuming research and analysis to estimate internal dose. Instead, NIOSH would immediately report the limited dose estimate, based on external dose only, to the claimant and DOL, along with an explanation of the reason for limiting the dose reconstruction process.

Similarly, if, for example, records and information establish that an employee incurred radiation doses evidently below a level that could result in compensation, NIOSH would substitute worst-case assumptions for additional research and analysis, to complete and report on the dose reconstruction without delay.

This approach will provide more timely compensation for claims for which it is evident the claimant will qualify for compensation, and more timely results and adjudication for claims for which it is evident further research and analysis is extremely unlikely to produce a compensable level of radiation dose. The Department seeks

public comment on all aspects of this process.

Section 82.11 defines the subset of claimants under EEOICPA for whom NIOSH will conduct dose reconstructions. NIOSH will attempt to conduct dose reconstructions for all claims forwarded to NIOSH from DOL. This includes all covered employees seeking compensation for cancer, other than as members of the *Special Exposure Cohort* seeking compensation for a specified cancer, as determined by DOL.

Section 82.12 describes NIOSH procedures for notifying any claimants for whom a dose reconstruction cannot be completed because of insufficient information to reasonably estimate the dose potentially incurred by the covered employee. NIOSH will notify the claimant and DOL that a dose reconstruction cannot be completed and describe the basis for this finding. In these cases, the claimant would have the opportunity to seek administrative review of this result after DOL produces a recommended decision to deny the claim, based on the report from NIOSH that there is insufficient evidence to complete a dose reconstruction. For a claim in which the employee has a specified cancer, the claimant might still be eligible for compensation under EEOICPA. Classes of covered employees have the option to petition HHS to be added to the Special Exposure Cohort. HHS will establish procedures to consider such petitions, as required under section 3626 of EEOICPA and § 2(b) of E.O. 13179. HHS expects to establish the procedures within six months of publication of this rule.

Sections 82.13 and 82.14 describe in detail the sources and examples of the types of information NIOSH will use in dose reconstructions. DOE and claimants will be the primary sources of information. Information types include: Subject and employment information, worker monitoring data, monitoring program data, workplace monitoring data, workplace characterization data, and process descriptions for each work location. The actual use of this wide range of information will be determined for each claim individually, based on the types of information available and necessary.

Sections 82.15–82.17 describe how NIOSH will evaluate the completeness and adequacy of monitoring data and how NIOSH would remedy limitations, applying the general approach described in § 82.2 and making use of the data sources and types described in §§ 82.13 and 82.14. NIOSH will evaluate the completeness and adequacy of monitoring data by various means, such

as evaluating associated information on the workplace environment and practices, evaluating the monitoring technology, and evaluating other sources of information. NIOSH will remedy data limitations using established dose reconstruction practices, such as interpolating from recorded doses to estimate unrecorded doses, and substituting monitoring data from comparably exposed workers. HHS seeks public comments suggesting alternative approaches that NIOSH should consider.

Sections 82.18–82.19 describe how NIOSH will address salient technical issues of calculating internal dose and taking into account uncertainty with respect to dose information. Internal dose is the radiation dose received by radioactive materials taken into the body, such as by inhalation or ingestion. It is important because it accumulates year after year, increasing the risk of certain cancers over time. NIOSH will use current ICRP models for calculating internal dose, and will accompany dose estimates with uncertainty distributions. DOL will use these distributions with appropriate statistical methods to take into account uncertainty about the dose when calculating probability of causation for a claim.

Reporting and Review of Dose Reconstruction Results

Sections 82.25 and 82.26 describe in detail NIOSH procedures for reporting the results of dose reconstructions to claimants and DOL, specifying the timing, content, and form of the dose reconstruction reports.

Section 82.27 describes how and when claimants can obtain reviews of NIOSH dose reconstructions. NIOSH will review dose reconstructions upon request by DOL under DOL procedures for claimants seeking review of dose reconstructions. These procedures also allow for DOL to request reviews of dose reconstruction upon its own initiative; for example, to request review of previously completed dose reconstructions to reflect updated scientific methods.

VI. Regulatory Procedures

The Department of Health and Human Services (HHS) follows the Administrative Procedure Act ("APA") rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. In most circumstances, the APA requires a public notice and comment period and consideration of the submitted comments prior to promulgation of a final rule having the effect of law. However, the APA provides for exceptions to its notice and

comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of this interim final rule, HHS has determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the notice and comment procedures. For these same reasons, HHS has also determined good cause exists under 5 U.S.C. 553(d)(3) for these interim rules to become effective immediately.

A number of courts have considered the circumstances under which an agency can conclude that good cause exists for issuing regulations without prior notice and comment. In *American Transfer & Storage Co., et al v. Interstate Commerce Commission*, 719 F.2d 1283, 1295 (5th Cir. 1983), the Fifth Circuit described the impracticability test as requiring "analysis in practical terms of the particular statutory-agency setting and the reasons why agency action could not await notice and comment." Similarly, the Seventh Circuit noted that the "legislative history of the impracticability standard reveals that Congress intended this exemption to operate when the regular course of rulemaking procedure would interfere with the agency's ability to perform its functions with the time constraints imposed by Congress." *United States Steel Corporation v. United States Environmental Protection Agency*, 605 F.2d 283, 287 (7th Cir. 1979). Courts have also recognized that while strict deadlines alone do not justify dispensing with notice and comment, "deviation from APA requirements has been permitted where congressional deadlines are very tight and the statute is particularly complicated." *Methodist Hospital of Sacramento v. Shalala*, 38 F.3d 1225, 1236 (D.C. Cir. 1994).

Precisely such an "analysis in practical terms" demonstrates that in this case, as with respect to changes in the Aid to Families with Dependent Children program at issue in *Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 887, 894 (3rd Cir. 1982), "Congress, by setting an effective date so close to the date of enactment, expressed its belief that implementation * * * was urgent." Legislation enacting EEOICPA was signed by the President on October 30, 2000, and responsibility for implementing EEOICPA was assigned to specific agencies by Executive Order on December 7, 2000. In sections 3628 and 3629 of EEOICPA, however, Congress authorized the Secretary of Labor to begin providing compensation to qualified claimants on July 31 2001. To ensure qualified

claimants who have cancer or survive employees who had cancer caused by exposure to radiation in their employment by DOE or its contractors or subcontractors receive the compensation to which they are entitled as soon as possible after July 31, 2001, HHS has determined it is necessary to implement the dose reconstruction methods set forth here on an interim final basis.

Under Executive Order 13179, the President assigned HHS three primary responsibilities in assisting the Department of Labor to make determinations on claims for cancer. First, HHS must promulgate methods for estimating the radiation doses incurred in the performance of duty by covered employees who submit claims or are the subject of claims submitted by their survivors. Second, pursuant to the methods established by this interim final regulation, HHS must perform individual dose reconstructions to determine the radiation dose incurred by each covered employee for whom a claim is made. Third, HHS must promulgate guidelines for DOL to use in determining whether the cancers presented by the employees were "as least as likely as not" caused by the radiation doses they incurred. HHS is publishing these probability of causation guidelines simultaneously with this interim final rule as a notice of proposed rulemaking (NPRM) in this issue of the **Federal Register**.

Completion of HHS work on dose reconstructions is a prerequisite for DOL to begin using the HHS probability of causation guidelines to make individual determinations. HHS has determined to publish the methods for dose reconstruction as an interim final rule so that HHS can initiate the lengthy process of dose reconstructions for individual claimants. HHS must identify and gather relevant records, evaluate their adequacy, and interact with the claimant in completing each dose reconstruction. By publishing the dose reconstruction methods as an interim final rule, HHS will be able to complete dose reconstruction work to allow DOL to complete the adjudication of claims as soon as possible after the HHS probability of causation guidelines are published as final rules.

If HHS were to issue an NPRM proposing dose reconstruction methods, HHS would be delayed in processing dose reconstructions for individual claimants by at least 150 days, until a final regulation could be issued.

HHS believes good cause exists to waive the notice and comment procedures under the APA for the promulgation of these interim final

rules. There is a strong public interest in the expeditious adjudication of claims that these workers, who served in this nation's nuclear weapons programs, were harmed in the performance of their duties. This public interest is clearly reflected in the mandate given by Congress to swiftly initiate this program. Moreover, qualified claimants should be given the opportunity to obtain their benefits, including medical benefits, as soon as possible. This is especially material given that many of the covered workers eligible to make claims under this Act are elderly and ill. An undue delay in the processing of their claims would result in real harm to these claimants.

With the publication of this interim final rule, HHS can begin the labor intensive process of reconstructing the radiation doses of employees covered by these claims. Once the probability of causation guidelines are finalized, DOL will be able to expeditiously adjudicate cancer claims requiring dose reconstructions.

Although HHS is adopting these dose reconstruction rules on an interim final basis, it requests public comment on this rule. After full consideration of public comments, HHS will publish a final rule with any necessary changes. HHS expects to issue a final rule within six months of the publication of this interim final rule, at the same time as it expects to issue final guidelines regarding the probability of causation. Since dose reconstructions completed under the interim final rule cannot be used to finally adjudicate claims until those guidelines are issued in final form, HHS will be able to review and revise dose reconstructions completed under this interim final rule, as necessary, to conform with any substantive changes that might be included in the final dose reconstruction rule before any final action is taken on a particular claim. By issuing the dose reconstruction regulation as an interim final regulation, however, substantial time can be saved and many more claims can be timely adjudicated, based on the final regulation and guidelines, enabling covered employees or their survivors to receive benefits to which they may be entitled as expeditiously as possible.

VII. Significant Regulatory Action (Executive Order 12866)

This rule is being treated as a "significant regulatory action" within the meaning of Executive Order (E.O.) 12866 because it raises novel or legal policy issues arising out of the legal mandate established by EEOICPA. The rule is designed to establish practical

methods, grounded in current science, to fairly and efficiently assist claimants and support DOL in the adjudication of applicable claims seeking compensation for cancer under EEOICPA. NIOSH will apply the methods to produce reasonable, scientifically supported estimates of the radiation doses incurred by covered employees subject to the claims, as permitted by available data and information. The financial cost to the federal government of producing these estimates is expected to be several thousand dollars per claim, on average.

The rule carefully explains the manner in which the regulatory action is consistent with the mandate for this action under § 3623(d) of EEOICPA and implements the detailed requirements concerning this action under this section of EEOICPA. The rule does not interfere with State, local, and tribal governments in the exercise of their governmental functions.

The rule is not considered economically significant, as defined in section 3(f)(1) of the Executive Order 12866. It has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR parts 1 and 30. DOL has determined that its rule fulfills the requirements of Executive Order 12866 and provides estimates of the aggregate cost of benefits and administrative expenses of implementing EEOICPA under its rule (see FR 28948, May 25, 2001). OMB has reviewed this rule for consistency with the President's priorities and the principles set forth in E.O. 12866.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. We certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. This rule affects only DOL, DOE, HHS, and some individuals filing compensation claims under EEOICPA. Therefore, a regulatory flexibility analysis as provided for under RFA is not required.

IX. What Are the Paperwork and Other Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under This Rule, and How Are Comments Submitted?

Under the Paperwork Reduction Act of 1995, a Federal agency shall not conduct or sponsor a collection of information from ten or more persons other than Federal employees unless the agency has submitted a Standard Form 83, Clearance Request, and Notice of Action, to the Director of the Office of Management and Budget (OMB), and the Director has approved the proposed collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The Paperwork Reduction Act is applicable to the data collection aspects of this rule.

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of projects. To request more information on this project or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639-7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

NIOSH is requesting an emergency clearance from the Office of Management and Budget (OMB) to collect data under EEOICPA. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice. OMB is expected to act on the request of HHS within 21 days of publication of this notice.

In performance of its dose reconstruction responsibilities under

the Act, NIOSH will interview claimants individually and provide them with the opportunity, through a structured interview, to assist NIOSH in documenting the work history of the employee (characterizing the actual work tasks performed), identifying incidents that may have resulted in undocumented radiation exposures, characterizing radiation protection and monitoring practices, and identifying co-workers, radiation protection management and staff, line managers, and other witnesses, if NIOSH determines this is necessary, to confirm undocumented information. In this process, NIOSH will use a computer assisted telephone interview (CATI) system, which will allow interviews to be conducted more efficiently and quickly than would be the case with a paper-based interview instrument.

NIOSH will use the data collected in this process to complete an individual dose reconstruction that accounts for radiation dose, including unmonitored or inadequately monitored dose, incurred by the employee in the performance of duty for DOE nuclear weapons production programs. After dose reconstruction, NIOSH will provide a draft of the dose reconstruction report to the claimant and perform a brief follow-up interview with the claimant to explain the results and to allow the claimant to confirm or question the record NIOSH has compiled. This will also be the final opportunity for the claimant to supplement the dose reconstruction record.

At the conclusion of the dose reconstruction process, the claimant will be requested to submit to NIOSH a form (OCAS-1) to confirm that the claimant has completed providing information to NIOSH for the dose reconstruction. The form will notify the claimant that signing the form allows NIOSH to provide a final dose reconstruction report to DOL and closes the record on data to be used for the dose reconstruction. DOL will use data from the dose reconstruction report to determine the probability that the cancer(s) of the covered employee may have been caused by radiation doses incurred in the performance of duty at a DOE or AWE facility.

There will be no cost to respondents for this data collection. This is a new data collection. The estimated burden of this data collection is described in the table below.

Respondents	Number of respondents	Number of responses	Avg. burden per response (hrs.)	Total hours
Initial interview	22,500	1	60/60	22,500
Conclusion form	22,500	1	5/60	1,875
Total				24,375

X. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report to Congress promulgation of this rule prior to its effective date. The report will state that the Department has concluded that this rule is not a "major rule" because it is not likely to result in an annual effect on the economy of \$100 million or more. However, this rule has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR parts 1 and 30. DOL has determined that its rule is a "major rule" because it will likely result in an annual effect on the economy of \$100 million or more.

XI. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, "other than to the extent that such regulations incorporate requirements specifically set forth in law." For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of \$ 100 million by State, local or tribal governments in the aggregate, or by the private sector.

XII. Executive Order 12988 (Civil Justice)

This rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform and will not unduly burden the Federal court system. Dose reconstruction may be an element in reviews of DOL adverse decisions in the United States District Courts pursuant to the Administrative Procedure Act. However, DOL has attempted to minimize that burden by providing claimants an opportunity to seek administrative review of adverse decisions, including those involving dose reconstruction. This rule provides a clear legal standard for HHS and DOL

to apply regarding dose reconstruction. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

XIII. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does 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."

XIV. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. The agency has determined that the rule will not affect children.

XV. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this rule on energy supply, distribution or use, and has determined that this rule is not likely to have a significant adverse effect on them.

List of Subjects in 42 CFR Part 82

Cancer, Dose reconstruction, Government employees, Occupational safety and health, Nuclear materials, Radiation protection, Radioactive materials, Workers' compensation.

Text of the Rule

For the reasons discussed in the preamble, the Department of Health and Human Services amends 42 CFR to add Part 82 to read as follows:

PART 82—METHODS FOR CONDUCTING DOSE RECONSTRUCTION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000

Subpart A—Introduction

Sec.

- 82.0 Background Information on this Rule.
- 82.1 What is the purpose of this rule?
- 82.2 What are the basics of dose reconstruction?
- 82.3 What are the requirements for dose reconstruction under EEOICPA?
- 82.4 How will DOL use the results of the NIOSH dose reconstructions?

Subpart B—Definitions

- 82.5 Definition of Terms Used in this Rule.

Subpart C—Dose Reconstruction Process

- 82.10 Overview of the Dose Reconstruction Process.
- 82.11 For which claims under EEOICPA will NIOSH conduct a dose reconstruction?
- 82.12 Will it be possible to conduct dose reconstructions for all claims?
- 82.13 What sources of information may be used for dose reconstructions?
- 82.14 What types of information could be used in dose reconstructions?
- 82.15 How will NIOSH evaluate the completeness and adequacy of individual monitoring data?
- 82.16 How will NIOSH add to monitoring data to remedy limitations of individual monitoring and missed dose?
- 82.17 What types of information could be used to supplement or substitute for individual monitoring data?
- 82.18 How will NIOSH calculate internal dose to the primary cancer site(s)?
- 82.19 How will NIOSH address uncertainty about dose levels?

Subpart D—Reporting and Review of Dose Reconstruction Results

- 82.25 When will NIOSH report dose reconstruction results, and to whom?
- 82.26 How will NIOSH report dose reconstruction results?
- 82.27 How can claimants obtain reviews of their dose reconstruction results by NIOSH?
- 82.28 Who can review NIOSH dose reconstruction files on individual claimants?

Authority: 42 U.S.C. 7384n; E.O. 13179, 65 FR 77487.

Subpart A—Introduction

§ 82.0 Background Information on this Rule.

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA), Public Law 106-398, provides for the payment of compensation benefits to covered employees and, where applicable, survivors of such employees, of the United States Department of Energy, its predecessor agencies and certain of its contractors and subcontractors. Among the types of illnesses for which compensation may be provided are cancers. There are two categories of covered employees with cancer under EEOICPA for whom compensation may be provided. The regulations that follow under this part apply only to the category of employees described under (a) of this section.

(a) One category is employees with cancer for whom a dose reconstruction must be conducted, as required under 20 CFR 30.115.

(b) The second category is members of the Special Exposure Cohort seeking compensation for a specified cancer, as defined under EEOICPA. The U.S. Department of Labor (DOL) which has primary authority for implementing EEOICPA, has promulgated regulations at 20 CFR 30.210 and 30.213 that identify current members of the Special Exposure Cohort and requirements for compensation. Pursuant to section 3626 of EEOICPA, the Secretary of HHS is authorized to add additional classes of employees to the Special Exposure Cohort.

§ 82.1 What is the purpose of this rule?

The purpose of this rule is to provide methods for determining a reasonable estimate of the radiation dose received by a covered employee with cancer under EEOICPA, through the completion of a dose reconstruction. These methods will be applied by the National Institute for Occupational Safety and Health (NIOSH) in a dose reconstruction program serving claimants under EEOICPA, as identified under § 82.0.

§ 82.2 What are the basics of dose reconstruction?

The basic principle of dose reconstruction is to characterize the radiation environments to which workers were exposed and to then place each worker in time and space within this exposure environment. Then methods are applied to translate exposure to radiation into quantified radiation doses at the specific organs or tissues relevant to the types of cancer

occurring among the workers. A hierarchy of methods is used in a dose reconstruction, depending on the nature of the exposure conditions and the type, quality, and completeness of data available to characterize the environment.

(a) If found to be complete and adequate, individual worker monitoring data, such as dosimeter readings and bioassay sample results, are given the highest priority in assessing exposure. These monitoring data are interpreted using additional data characterizing the workplace radiation exposures. If radiation exposures in the workplace environment cannot be fully characterized based on available data, default values based on reasonable and scientific assumptions may be used as substitutes. For dose reconstructions conducted in occupational illness compensation programs, this practice may include use of assumptions that represent the worst case conditions. For example, if the solubility classification of an inhaled material can not be determined, the dose reconstruction would use the classification that results in the largest dose to the organ or tissue relevant to the cancer.

(b) If individual monitoring data are not available or adequate, dose reconstructions may use monitoring results for groups of workers with comparable activities and relationships to the radiation environment. Alternatively, workplace area monitoring data may be used to estimate the dose. As with individual worker monitoring data, workplace exposure characteristics are used in combination with workplace monitoring data to estimate dose.

(c) If neither adequate worker nor workplace monitoring data are available, the dose reconstruction may rely substantially on process description information to analytically develop an exposure model. For internal exposures, this model includes such factors as the quantity and composition of the radioactive substance (the source term), the chemical form, particle size distribution, the level of containment, and the likelihood of dispersion.

§ 82.3 What are the requirements for dose reconstruction under EEOICPA?

(a) Dose reconstructions are to be conducted for the following covered employees with cancer seeking compensation under EEOICPA: An employee who was not monitored for exposure to radiation at Department of Energy (DOE) or Atomic Weapons Employer (AWE) facilities; an employee who was monitored inadequately for exposure to radiation at such facilities;

or an employee whose records of exposure to radiation at such facility are missing or incomplete. Technical limitations of radiation monitoring technology and procedures will require HHS to evaluate each employee's recorded dose. In most, if not all cases, monitoring limitations will result in possibly undetected or unrecorded doses, which are estimated using commonly practiced dose reconstruction methods and would have to be added to the dose record.

(b) Section 3623(e) of EEOICPA requires the reporting of radiation dose information resulting from dose reconstructions to the covered employees for whom claims are being adjudicated. DOE is specifically charged with this responsibility but the Department of Health and Human Services (HHS), which will be producing the dose reconstruction information, will implement this reporting responsibility on behalf of DOE. HHS will also make available to researchers and the general public information on the assumptions, methodology, and data used in estimating radiation doses, as required by EEOICPA.

§ 82.4 How will DOL use the results of the NIOSH dose reconstructions?

Under 42 CFR part 81, DOL will apply dose reconstruction results together with information on cancer diagnosis and other personal information provided to DOL by the claimant to calculate an estimated probability of causation. This estimate is the probability that the cancer of the covered employee was caused by radiation exposure at a covered facility of DOE or an Atomic Weapons Employer (AWE).

Subpart B—Definitions

§ 82.5 Definition of Terms Used in this Rule.

(a) *Atomic weapons employer (AWE)* means any entity, other than the United States, that:

(1) Processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and,

(2) Is designated by the Secretary of Energy as an atomic weapons employer for purposes of EEOICPA.

(b) *Bioassay* means the determination of the kinds, quantities, or concentrations, and in some cases, locations of radioactive material in the human body, whether by direct measurement or by analysis, and

evaluation of radioactive material excreted or eliminated by the body.

(c) *Claimant* means the individual who has filed with the Department of Labor for compensation under EEOICPA.

(d) *Covered employee* means, for the purposes of this rule, an individual who is or was an employee of DOE, a DOE contractor or subcontractor, or an atomic weapons employer, and for whom DOL has requested HHS to perform a dose reconstruction.

(e) *Covered facility* means any building, structure, or premises, including the grounds upon which such building, structure, or premise is located:

(1) In which operations are, or have been, conducted by, or on behalf of, the DOE (except for buildings, structures, premises, grounds, or operations covered by Executive Order 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and,

(2) With regard to which the DOE has or had:

(i) A proprietary interest; or,

(ii) Entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services; or

(3) A facility owned by an entity designated by the Secretary of Energy as an atomic weapons employer for purposes of EEOICPA that is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling.

(f) *DOE*: The U.S. Department of Energy, includes predecessor agencies of DOE, including the Manhattan Engineering District.

(g) *DOL*: The U.S. Department of Labor.

(h) *EEOICPA* means the Energy Employees Occupational Illness Compensation Program Act of 2000, Public Law 106-398, as amended.

(i) *Equivalent dose* is the absorbed dose in a tissue multiplied by a radiation weighting factor to account for differences in the effectiveness of the radiation in inducing cancer.

(j) *External dose* means that portion of the equivalent dose that is received from radiation sources outside of the body.

(k) *Internal dose* means that portion of the equivalent dose that is received from radioactive materials taken into the body.

(l) *NIOSH*: the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S.

Department of Health and Human Services.

(m) *Primary cancer* means a cancer defined by the original body site at which the cancer was incurred, prior to any spread (metastasis) resulting in tumors at other sites in the body.

(n) *Probability of causation* means the probability or likelihood that a cancer was caused by radiation exposure incurred by a covered employee in the performance of duty. In statistical terms, it is the cancer risk attributable to radiation exposure divided by the sum of the baseline cancer risk (the risk to the general population) plus the cancer risk attributable to the radiation exposure. This concept is further explained under 42 CFR part 81, which provides guidelines by which DOL will determine probability of causation under EEOICPA.

(o) *Radiation* means ionizing radiation, including alpha particles, beta particles, gamma rays, x rays, neutrons, protons and other particles capable of producing ions in the body. For purposes of this rule, radiation does not include sources of non-ionizing radiation such as radio-frequency radiation, microwaves, visible light, and infrared or ultraviolet light radiation.

(p) *Specified cancer* is a term defined in section 3621(17) of EEOICPA and 20 CFR part 30.5(dd) that specifies types of cancer that, pursuant to 20 CFR part 30, may qualify a member of the Special Exposure Cohort for compensation. It includes leukemia (other than chronic lymphocytic leukemia), multiple myeloma, non-Hodgkin's lymphoma, and cancers of the lung (other than carcinoma in situ diagnosed at autopsy), thyroid, male breast, female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, liver (not associated with cirrhosis or hepatitis), and bone. Pursuant to section 2403 of Public Law 107-20, this definition will include renal cancer.

(q) *Uncertainty distribution* is a statistical term meaning a range of discrete or continuous values arrayed around a central estimate, where each value is assigned a probability of being correct.

(r) *Worst-case assumption* is a term used to describe a type of assumption used in certain instances for certain dose reconstructions conducted under this rule. It assigns the highest reasonably possible value, based on reliable science, documented experience, and relevant data, to a radiation dose of a covered employee.

Subpart C—Dose Reconstruction Process

§ 82.10 Overview of the Dose Reconstruction Process.

(a) Upon receipt of a claims package from the Department of Labor, as provided under 20 CFR part 30, NIOSH will request from the Department of Energy (DOE) records on radiation dose monitoring and radiation exposures associated with the employment history of the covered employee. Additionally, NIOSH may compile data, and information from NIOSH records that may contribute to the dose reconstruction. For each dose reconstruction, NIOSH will include records relevant to internal and external exposures to ionizing radiation, including exposures from medical screening x rays that were required as a condition of employment.

(b) NIOSH will evaluate the initial radiation exposure record compiled to: Reconcile the exposure record with the reported employment history, as necessary; complete preliminary calculations of dose, based upon this initial record, and prepare to consult with the claimant. Any discrepancies in the employment history information will be reconciled with the assistance of DOE, as necessary.

(c) NIOSH will interview the claimant. The purpose of the interview is to:

(1) Explain the dose reconstruction process;

(2) Confirm elements of the employment history transmitted to NIOSH by DOL;

(3) Identify any relevant information on employment history that may have been omitted;

(4) Confirm or supplement monitoring information included in the initial radiation exposure record;

(5) Develop detailed information on work tasks, production processes, radiologic protection and monitoring practices, and incidents that may have resulted in undocumented radiation exposures, as necessary;

(6) Identify co-workers and other witnesses with information relevant to the radiation exposures of the covered worker to supplement or confirm information on work experiences, as necessary.

(d) NIOSH will provide a report to the claimant summarizing the findings of the interview, titled: "NIOSH Claimant Interview under EEOICPA." The report will also notify the claimant of the opportunity to contact NIOSH if necessary, by a specified date, to make any written corrections or additions to

information provided by the claimant during the interview process.

(e) Information provided by the claimant will be accepted and used for dose reconstruction, providing it is reasonable, supported by substantial evidence, and is not refuted by other evidence. In assessing whether the information provided by the claimant is supported by substantial evidence, NIOSH will consider:

(1) Consistency of the information with other information in the possession of NIOSH, from radiation safety programs, research, medical screening programs, labor union documents, worksite investigations, dose reconstructions conducted by NIOSH under EEOICPA, or other reports relating to the circumstances at issue;

(2) Consistency of the information with medical records provided by the claimant;

(3) Consistency of the information with practices or exposures demonstrated by the dose reconstruction record developed for the claimant; and,

(4) Confirmation of information by co-workers or other witnesses.

(f) NIOSH will seek to confirm information provided by the claimant through review of available records and records requested from DOE.

(g) As necessary, NIOSH will request additional records from DOE to characterize processes and tasks potentially involving radiation exposure for which dose and exposure monitoring data is incomplete or insufficient for dose reconstruction.

(h) NIOSH will review the adequacy of monitoring data and completeness of records provided by DOE. NIOSH will request certification from DOE that record searches requested by NIOSH have been completed.

(i) As necessary, NIOSH will characterize the internal and external exposure environments for parameters known to influence the dose. For internal exposures, examples of these parameters include the mode of intake, the composition of the source term (i.e., the radionuclide type and quantity), the particle size distribution and the absorption type. When it is not possible to characterize these parameters, NIOSH may use default values, when they can be established reasonably, fairly, and based on relevant science. For external exposures, the radiation type (gamma, x-ray, neutron, beta, or other charged particle) and radiation energy spectrum will be evaluated. When possible, the effect of non-uniformity and geometry of the radiation exposure will be assessed.

(j) For individual monitoring records that are incomplete, doses may be

imputed using techniques discussed in § 82.16. Once the resulting data set has been evaluated and validated, an occupational exposure matrix will be constructed, using the general hierarchical approach discussed in § 82.2. This matrix will contain the estimated annual equivalent dose(s) to the relevant organ(s) or tissue(s), for the period from the initial date of potential exposure at a covered facility until the date the cancer was diagnosed. The equivalent dose(s) will be calculated using the current, standard radiation weighting factors from the International Commission on Radiological Protection (ICRP, Publication 60),¹ indicated in Table 1.

TABLE 1.—RADIATION WEIGHTING FACTORS

Radiation type and energy range	Radiation weighting factor, w_R
Photons, all energies	1
Electrons and muons, all energies	1
Neutrons, energy <10 keV	5
10 keV to 100 keV	10
>100 keV to 2 MeV	20
>2 MeV to 20 MeV	10
>20 MeV	5
Protons, other than recoil protons, energy >2 MeV	5
Alpha particles, fission fragments and heavy nuclei	20

(k)(1) At any point during steps in paragraphs (f)–(j) of this section of dose reconstruction, NIOSH may determine that sufficient research and analysis has been conducted to complete the dose reconstruction. Research and analysis will be determined sufficient if one of the following three conditions is met:

(i) From acquired experience, it is evident the estimated cumulative dose is sufficient to qualify the claimant for compensation (i.e., the dose produces a probability of causation of 50% or greater);

(ii) Dose is determined using worst-case assumptions related to radiation exposure and intake, to substitute for further research and analyses; or,

(iii) Research and analysis indicated under steps in paragraphs (f)–(j) of this section have been completed.

(2) Worst-case assumptions will be employed under condition in paragraph (k)(1)(ii) of this section to limit further research and analysis only for claims for which it is evident that further research and analysis will be extremely unlikely

to produce a compensable level of radiation dose (a dose producing a probability of causation of 50% or greater), because even using worst-case assumptions it cannot be determined that the employee may have incurred a compensable level of radiation dose. For all claims in which worst-case assumptions are employed under condition in paragraph (k)(1)(ii) of this section, the reasoning that resulted in the determination to limit further research and analysis will be clearly described in the draft of the dose reconstruction results reported to the claimant under § 82.25 and in the dose reconstruction results reported to the claimant under § 82.26.

(l) After providing the claimant with a copy of a draft of the dose reconstruction report to be provided to DOL, NIOSH will conduct a closing interview with the claimant to review the dose reconstruction results and the basis upon which the results were calculated. This will be the final opportunity during the dose reconstruction process for the claimant to provide additional relevant information that may affect the dose reconstruction.

(m) Subject to any additional information provided by the claimant under § 82.10(l), the claimant is required to return form OCAS-1 to NIOSH, certifying that the claimant has completed providing information and that the record for dose reconstruction should be closed. Upon receipt of the form and completion of any changes in the dose reconstruction resulting from new information provided under § 82.10(l), NIOSH will forward a final dose reconstruction report to DOL and to the claimant.

(n) NIOSH will not forward the dose reconstruction report to DOL for adjudication without receipt of form OCAS-1 signed by the claimant or a representative of the claimant authorized pursuant to 20 CFR 30.600. If the claimant or the authorized representative of the claimant fails to sign and return form OCAS-1 within 60 days, after notifying the claimant or the authorized representative, NIOSH may administratively close the dose reconstruction and notify DOL of this action. Upon receiving this notification by NIOSH, DOL may administratively close the claim.

(o) Once actions under § 82.10(m) are completed, the record for dose reconstruction shall be closed unless reopened at the request of DOL under 20 CFR part 30.

¹ International Commission on Radiological Protection (ICRP) 60: "1990 Recommendations of the International Commission on Radiological Protection." Ann. ICRP 21(1-3): 6.

§ 82.11 For which claims under EEOICPA will NIOSH conduct a dose reconstruction?

NIOSH will conduct a dose reconstruction for each claim determined by DOL to be a claim for a covered employee with cancer under DOL regulations at 20 CFR 30.210(b), subject to the limitation and exception noted in § 82.12. Claims for covered employees who are members of the Special Exposure Cohort seeking compensation for a specified cancer, as determined by DOL under 20 CFR 30.210(a), do not require and will not receive a dose reconstruction under this rule.

§ 82.12 Will it be possible to conduct dose reconstructions for all claims?

It is uncertain whether adequate information of the types outlined under § 82.14 will be available to complete a dose reconstruction for every claim eligible under § 82.11.

(a) NIOSH will notify in writing any claimants for whom a dose reconstruction cannot be completed once that determination is made, as well as in the closing interview provided for under § 82.10(l).

(b) Notification will describe the basis for finding a dose reconstruction cannot be completed, including the following:

(1) A summary of the information obtained from DOE and other sources; and,

(2) A summary of necessary information found to be unavailable from DOE and other sources.

(c) NIOSH will notify DOL when it is unable to complete a dose reconstruction for the claimant. This will result in DOL producing a recommended decision to deny the claim, since DOL cannot determine probability of causation without a dose estimate produced by NIOSH under this rule.

(d) A claimant for whom a dose reconstruction cannot be completed, as indicated under this section, may have recourse to seek compensation under provisions of the Special Exposure Cohort (see 20 CFR part 30). Pursuant to section 3626 of EEOICPA, the Secretary of HHS is authorized to add additional classes of employees to the Special Exposure Cohort.

§ 82.13 What sources of information may be used for dose reconstructions?

NIOSH will use the following sources of information for dose reconstructions, as necessary:

(a) DOE and its contractors, including Atomic Weapons Employers and the former worker medical screening program;

(b) NIOSH and other records from health research on DOE worker populations;

(c) Interviews and records provided by claimants;

(d) Co-workers of covered employees, or other witnesses with information relevant to the covered employee's exposure, that the claimant identified during the initial interview with NIOSH;

(e) Labor union records from unions representing employees at covered facilities of DOE or AWEs; and,

(f) Any other relevant information.

§ 82.14 What types of information could be used in dose reconstructions?

NIOSH will obtain the types of information described in this section for dose reconstructions, as necessary and available:

(a) *Subject and employment information*, including:

(1) Gender;

(2) Date of birth; and,

(3) DOE and/or AWE employment history, including: job title held by year, and work location(s): Including site name(s), building number(s), technical area(s), and duration of relevant employment or tasks.

(b) *Worker monitoring data*, including:

(1) External dosimetry data, including external dosimeter readings (film badge, TLD, neutron dosimeters); and,

(2) Pocket ionization chamber data.

(c) *Internal dosimetry data*, including:

(1) Urinalysis results;

(2) Fecal sample results;

(3) In Vivo measurement results;

(4) Incident investigation reports;

(5) Breath radon and/or thoron

results;

(6) Nasal smear results; and,

(7) External contamination

measurements.

(d) *Monitoring program data*,

including:

(1) Analytical methods used for

bioassay analyses;

(2) Performance characteristics of

dosimeters for different radiation types;

(3) Historical detection limits for

bioassay samples and dosimeter badges;

(4) Bioassay sample and dosimeter

collection/exchange frequencies; and,

(5) Documentation of record keeping

practices used to record data and/or

administratively assign dose.

(e) *Workplace monitoring data*,

including:

(1) Surface contamination surveys;

(2) General area air sampling results;

(3) Breathing zone air sampling

results;

(4) Radon and/or thoron monitoring

results;

(5) Area radiation survey measurements (beta, gamma and neutron); and,

(6) Fixed location dosimeter results (beta, gamma and neutron).

(f) *Workplace characterization data*, including:

(1) Information on the external exposure environment, including: Radiation type (gamma, x-ray, neutron, beta, other charged particle); radiation energy spectrum; uniformity of exposure (whole body vs partial body exposure); irradiation geometry; and work-required medical screening x rays.

(2) [Reserved]

(g) *Information characterizing internal exposures*, including:

(1) Radionuclide(s) and associated chemical forms;

(2) Results of particle size distribution studies; and,

(3) Respiratory protection practices.

(h) *Process descriptions for each work location*, including:

(1) General description of the process;

(2) Characterization of the source term (i.e., the radionuclide and its quantity);

(3) Extent of encapsulation;

(4) Methods of containment;

(5) Other information to assess potential for airborne dispersion.

§ 82.15 How will NIOSH evaluate the completeness and adequacy of individual monitoring data?

(a) NIOSH will evaluate the completeness of an individual's monitoring data provided by DOE through one or more possible measures including, but not limited to:

(1) Comparisons with information provided by claimants, co-workers, and other witnesses;

(2) Comparisons with available information on area monitoring, production processes, and radiologic protection programs;

(3) Comparisons with information documented in the records of unions representing covered employees;

(4) Comparisons with data available on co-workers; and

(5) Reviews of DOE contractor record systems.

(b) NIOSH will evaluate the instruments and procedures used to collect individual monitoring data to determine whether they adequately characterized the radiation environments in which the covered employee worked, (adequately for the purpose of dose reconstruction,) based on present-day scientific understanding. For external dosimeter measurements, this includes an evaluation of the dosimeter response to the radiation types (gamma, x-ray, neutron, beta, or other charged particle) and the

associated energy spectrum. For internal exposure, the methods used to analyze bioassay samples will be reviewed to determine their ability to detect the radionuclides present in the work environment. An analysis of the monitoring or exchange frequencies for the monitoring programs will also be conducted to determine the potential for undetected dose.

§ 82.16 How will NIOSH add to monitoring data to remedy limitations of individual monitoring and missed dose?

(a) For external dosimeter results that are incomplete due to historical record keeping practices, NIOSH will use commonly practiced techniques, such as those described in the NIOSH Research Issues Workshop,² to estimate the missing component of dose and to add this to the total dose estimate. For monitoring periods where external dosimetry data are missing from the records, NIOSH will estimate a claimant's dose based on interpolation, using available monitoring results from other time periods close to the period in question, or based on monitoring data on other workers engaged in similar tasks.

(b) NIOSH will review historical bioassay sample detection limits and monitoring frequencies to determine, when possible, the minimum detectable dose for routine internal dose monitoring programs. This "missed dose" will establish the upper limit of internal dose that a worker could have received for periods when bioassay sample analysis results were below the detection limit. Using ICRP biokinetic models, NIOSH will estimate the internal dose and include an associated uncertainty distribution.

§ 82.17 What types of information could be used to supplement or substitute for individual monitoring data?

Three types of information could be used:

(a) Monitoring data from co-workers, if NIOSH determines they had a common relationship to the radiation environment; or,

(b) A quantitative characterization of the radiation environment in which the covered employee worked, based on an analysis of historical workplace monitoring information such as area dosimeter readings, general area

radiation survey results, air sampling data; or,

(c) A quantitative characterization of the radiation environment in which the employee worked, based on analysis of data describing processes involving radioactive materials, the source materials, occupational tasks and locations, and radiation safety practices.

§ 82.18 How will NIOSH calculate internal dose to the primary cancer site(s)?

(a) The calculation of dose from ingested, inhaled or absorbed radioactivity involves the determination of the types and quantities of radionuclides that entered the body. NIOSH will use the results of all available bioassay monitoring information as appropriate, based on assessment of the technical characteristics of the monitoring program. If bioassay monitoring data are unavailable, the dose reconstruction will rely on the results of air sampling measurements.

(b) NIOSH will calculate the dose to the organ or tissue of concern using metabolic models published by ICRP. Using data available to NIOSH, the models will be based on exposure conditions representative of the work environment. When NIOSH cannot establish exposure conditions with sufficient specificity, the dose calculation will assume exposure conditions that maximize the dose to the organ under consideration.

(c) Internal doses will be calculated for each year of exposure from the date of initial exposure to the date of cancer diagnosis.

§ 82.19 How will NIOSH address uncertainty about dose levels?

The estimate of each annual dose will be characterized with a probability distribution that accounts for the uncertainty of the estimate. This information will be used by DOL in the calculation of probability of causation, under HHS guidelines for calculating probability of causation estimates at 42 CFR part 81. In this way, claimants will receive the benefit of the doubt in cases in which the actual dose may have exceeded the best estimate calculated by NIOSH.

Subpart D—Reporting and Review of Dose Reconstruction Results

§ 82.25 When will NIOSH report dose reconstruction results, and to whom?

NIOSH will report dose reconstruction results to DOL and to the claimant, as provided for under § 82.10. Draft results will be reported to the claimant upon tentative completion of the dose reconstruction. Final results

will be reported to the claimant and DOL after NIOSH receives certification from the claimant that the claimant has completed providing information to NIOSH for the dose reconstruction (Form OCAS-1).

§ 82.26 How will NIOSH report dose reconstruction results?

(a) NIOSH will provide dose reconstruction results to the claimant and DOL in a report: "NIOSH Report of Dose Reconstruction under EEOICPA." The report itself will not provide information on probability of causation, which DOL must calculate to determine a recommended decision on the claim.

(b) The report will include the following information, as relevant:

(1) Annual dose estimates (or a fraction thereof) related to covered employment for each year from the date of initial radiation exposure at a covered facility to the date of cancer diagnosis;

(2) Separate dose estimates for acute and chronic exposures, different types of ionizing radiation, and internal and external doses, providing dose information for the organ or tissue relevant to the primary cancer site(s) established in the claim;

(3) Uncertainty distributions associated with each dose estimated, as necessary;

(4) Explanation of each type of dose estimate included in terms of its relevance for estimating probability of causation;

(5) Identification of any information provided by the claimant relevant to dose estimation that NIOSH decided to omit from the basis for dose reconstruction, justification for the decision, and if possible, a quantitative estimate of the effect of the omission on the dose reconstruction results; and

(6) A summary and explanation of information and methods applied to produce the dose reconstruction estimates, including any factual findings and the evidence upon which those findings are based.

(c) As provided under § 82.10(l), NIOSH staff will conduct a closing interview with claimants to explain the dose reconstruction report.

§ 82.27 How can claimants obtain reviews of their dose reconstruction results by NIOSH?

Claimants can seek reviews of their dose reconstruction through the processes established by DOL under 20 CFR part 30. DOL will request NIOSH to review dose reconstructions under the following conditions, as provided under 20 CFR 30.318:

(a) DOL may determine that factual findings of the dose reconstruction do

² NIOSH (1995). NIOSH research issues workshop: Epidemiologic use of nondetectable values in radiation exposure measurements. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 224647 (NTIS-PB 95189601).

not appear to be supported by substantial evidence; or,

(b) Although the methodology established by HHS under this Part is binding on DOL, DOL may determine that arguments concerning the application of this methodology should be considered by NIOSH.

§ 82.28 Who can review NIOSH dose reconstruction files on individual claimants?

(a) Claimants and DOL will be provided individual dose reconstruction files, upon request. Claimants should note, however, that a complete summary of the data and methods used in a dose reconstruction will be included in the "NIOSH Report of Dose Reconstruction under EEOICPA".

(b) Researchers and the public will be provided limited access to NIOSH dose reconstruction files, subject to provisions and restrictions of the Privacy Act for the protection of confidential information on individuals. Researchers will not receive names of claimants or covered employees associated with dose reconstructions.

Dated: September 21, 2001.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 01-24879 Filed 10-4-01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 01-235; FCC 01-262]

RIN 4207

Cross-Ownership of Broadcast Stations and Newspapers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document initiates a proceeding to consider whether to eliminate, modify, or retain the Commission's newspaper/broadcast cross-ownership rule and/or related waiver policies. The takes this action in part because it committed to do so in its first biennial review of its broadcast ownership rules. The intended effect is the harmonization of the Commission's competition and diversity goals with the current realities of the local media marketplace.

DATES: Comments are due December 3, 2001; reply comments are due January 7, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eric J. Bash, (202) 418-2130 or ebash@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Notice of Proposed Rule Making* ("NPRM") in MM Docket No. 01-235, FCC 01-262, adopted September 13, 2001, and released September 20, 2000. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW, Room CY-B-402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via email qualexint@aol.com. The NPRM is also available on the Internet at the Commission's website: <http://www.fcc.gov>.

Introduction

1. In this proceeding, the Commission seeks comment on whether and to what extent it should revise the newspaper/broadcast cross-ownership rule, which prohibits common ownership of a broadcast station and a newspaper in the same geographic area. The rule rests on the "twin goals" of diversity of viewpoints and economic competition. The Commission adopted the rule in 1975. The local multimedia marketplace in which broadcast stations and newspapers operate has changed significantly since that time. This proceeding seeks comment on the relevance of these changes to the newspaper/broadcast cross-ownership rule.

Background

2. The newspaper/broadcast cross-ownership rule prohibit common ownership of a full-service broadcast station and a daily newspaper when the broadcast station's service contour (2mV/m contour for AM, 1 mV/m contour for FM, Grade A for TV) fully encompasses the newspaper's city of publication. When adopting the rule in 1975, the Commission not only prohibited future newspaper/broadcast combinations, but also required existing combinations in highly concentrated markets to divest holdings to come into compliance within five years. The Commission grandfathered combinations in other markets, so long as the parties to the combination remained the same. The Commission, however, contemplated waiving the

rule, for existing or future combinations, if: (1) A combination could not sell a station; (2) a combination could not sell a station except at an artificially depressed price; (3) separate ownership and operation of a newspaper and a station could not be supported in a locality; or (4) for whatever reason, the purposes of the rule would be disserved. The Supreme Court has reviewed the rule and the Commission's related waiver policies, and upheld them in their entirety. The Commission has granted only four permanent waivers in the twenty-six years since it adopted the rule.

3. In February 1996, the Telecommunications Act of 1996 also became law. Section 202(h) of the 1996 Act instructs the Commission to review each of its ownership rules biennially, to determine whether the rule is "necessary in the public interest as a result of competition" and repeal or modify any rule it finds is no longer in the public interest. As required by section 202(h) of the 1996 Act, the Commission examined the newspaper/broadcast cross-ownership policies in its first biennial review on broadcast ownership rules. The Commission concluded that the newspaper/broadcast cross-ownership rule continues to serve the public interest because it furthers diversity, and therefore should be retained. However, the Commission also noted that the rule might not be necessary to achieve its intended public interest benefits under certain circumstances. Thus, the Commission committed to undertaking a rulemaking proceeding to tailor the rule accordingly.

Discussion

4. Since the Commission adopted the newspaper/broadcast cross-ownership rule over twenty-five years ago, the local media marketplace has changed dramatically. In this proceeding, we seek to examine our newspaper/broadcast cross-ownership policies in the context of these changes in the local media marketplace, taking into account section 202(h) of the Telecommunications Act of 1996, and our diversity and competition goals.

5. *Current Status of the Media Marketplace.* The number of local media outlets has grown substantially since 1975. A significant portion of this growth has occurred within the broadcast industry itself. A total of 7,785 radio stations were on the air as of January 1, 1975; as of June 30, 2001, the Commission had licensed 12,932 radio stations. A total of 952 TV stations were on the air on January 1, 1975; as of June 30, 2001, the Commission had

licensed 1,678 full power television stations, 2,396 low power TV stations, and 232 Class A TV stations. In 1975, there were three national commercial broadcast networks, and today there are seven such networks. We seek comment on the relevance of these developments to our newspaper/broadcast cross-ownership policies.

6. Changes in the newspaper industry since 1975 have been more mixed. Although the number of daily newspapers has decreased since 1975, the number of weekly newspapers has increased. The number of daily newspapers has declined from 1,756 in 1975, to 1,422 in 2000. The total circulation of morning and evening daily newspapers has declined by about 8% from 60.6 million in 1975 to 55.8 million in 2000. However, the combined circulation of smaller, more targeted newspapers, often published weekly, has more than doubled: 7,612 weekly newspapers had a circulation of approximately 35.9 million in 1975, whereas 7,915 such newspapers had a circulation of approximately 81.6 million in 1996. These weekly newspapers are often the source of local information. We seek comment on these figures and their significance to our newspaper/broadcast cross-ownership rule, as well as any other data we should consider.

7. Besides the changes in the broadcast and newspaper industries, there has been a proliferation of other outlets in the local media marketplace. In 1975, cable television systems served only 13% of TV households. By June 2000, they served 67.4% of TV households, or 67.7 million people. There are over 200 video programming services available on cable systems. Other multichannel programming distributors (MVPDs), most notably direct broadcast satellite (DBS) providers, now compete in the marketplace but were nonexistent in 1975. DBS has grown rapidly, and now serves nearly 13 million subscribers, or over 15% of MVPD households. Other MVPDs serve another nearly 4 million subscribers. All of these MVPDs distribute the programming of many networks. Today, almost 84% of all TV households subscribe to an MVPD. We seek comment on the impact of these alternative media outlets on our newspaper/broadcast cross-ownership policies.

8. As of November 2000, 56% of Americans had access to the Internet from home, which was not commercially available in 1975. The Internet has the potential to be a significant source of local and national news and information, and, to a limited

though increasing extent, audio and video programming. The Internet may provide advertisers with alternative means of reaching their potential customers. We seek specific data on the impact of the Internet in the local media marketplace.

9. Although the number of media outlets has grown, so has the concentration in their ownership. Historically, the Commission has had both local and national ownership limits for broadcast stations. In 1975, on the local level, the Commission prohibited common ownership of two radio stations within the same type of service, or two TV stations when their signal contours overlapped. On the national level, the Commission prohibited common ownership of more than seven AM, seven FM, and seven TV stations. Pursuant to the 1996 Act, the Commission eliminated any national ownership limit on radio stations, and relaxed the national TV ownership limit to permit common ownership of TV stations that reach as many as 35% of TV households. It also relaxed its local radio ownership rules, and in 1999, its local TV multiple ownership rule. The result is that, while in 1975 a single entity could not own more than fourteen radio stations nationwide, today one entity owns more than 1,000 radio stations nationwide. In addition, at approximately the same time that the 1996 Act became law, there were approximately 5,100 owners of commercial radio stations, while now there are only approximately 3,800 owners, a decrease of 25%. Moreover, in 1995 there were 543 entities that owned commercial TV stations, while today there are only 360. We seek comment on the relevance of consolidation in the broadcast industry to our newspaper/broadcast cross-ownership policies, and additional data on how this consolidation has impacted the local media marketplace.

10. *Diversity.* As noted, the Commission adopted the newspaper/broadcast cross-ownership rule largely to promote and protect a diversity of viewpoints. The Commission has sought to ensure that the public has access to a diversity of viewpoints to promote First Amendment values. In the words of the Supreme Court, "[t]hat Amendment rests of the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. * * *" The Commission historically has sought to promote its goal of viewpoint diversity indirectly through structural regulation, such as ownership rules. We note that the Commission goal of diversity of

viewpoint has been particularly important in the context of newspaper/broadcast cross-ownership, given the reliance the public has placed on these media as sources of local news and information.

11. As we evaluate our newspaper/broadcast cross-ownership rule, we begin by asking whether the newspaper/broadcast cross-ownership rule continues to be necessary to protect a diversity of viewpoints. As noted, consumers today have many media outlets from which to obtain news and information. While the number of daily newspapers has declined, the number of weekly newspapers has doubled since 1975. In addition, approximately 77% of commercial TV stations provide local news. Virtually all affiliates of ABC, CBS, and NBC provide local news, and approximately one third of other broadcast TV stations do. This latter group includes stations affiliated with the Fox network, which did not even exist in 1975. As of 1999, approximately thirty regional cable news networks provided news and information targeted to more local areas than their national counterparts, such as CNN. These networks did not exist in 1975. Recent studies also show that the Internet is becoming an increasingly significant source of news and information. Indeed, these studies suggest that some Americans are turning to the Internet for news instead of TV, in particular broadcast TV. We seek comment on what information consumers actually access and how successful independent Internet-based providers of information have been. Are the data different for different types of local markets, or for different demographic and income groups? If so, what is the relevance of those differences for purposes of evaluating the newspaper/broadcast cross-ownership rule? Are there still other media that are sources of local news and information? Does the proliferation of these new media mean that the newspaper/broadcast cross-ownership rule is no longer necessary to ensure that consumers of news and information have access to diverse ideas and viewpoints?

12. Although the number of media outlets has increased, the Commission traditionally has focused on the number of different owners, as opposed to the number of media outlets, because as noted, the Commission has thought that diversity in ownership promotes diversity in viewpoint. According to this theory, common ownership of media outlets means that they are one and the same for purposes of viewpoint diversity. Under this view, the growth in the number of broadcast outlets is

counterbalanced by the consolidation in ownership of them. Accordingly, the development of regional cable news networks might not be considered especially important in terms of diversity analysis, because more than half of them are owned by co-located broadcast stations or newspapers. In addition, the growth of news-oriented websites likewise might not be considered particularly significant, because many do not focus on local news and information, and those that do are often operated by existing local media, such as broadcast stations and newspapers. We seek comment on the level of independence of other media, including the Internet.

13. The relationship between ownership diversity and viewpoint diversity is the subject of considerable debate. The Commission has noted the argument that "the greater the concentration of ownership, the greater the opportunity for diversity of content." Under this view, competing parties in a market have a commercial incentive to air "greatest common denominator" programming, while a single party that owns all stations in a market has a commercial incentive to air more diverse programming to appeal to all substantial interests. On the other hand, there also is the argument that the existence of multiple owners competing in a market is likely to provide viewpoint diversity "rather than content diversity" providing the "divergent viewpoints on controversial issues" which the Commission has stated is "essential to democracy." We seek comment on these competing theories of the relationship between ownership diversity and viewpoint diversity. Are commercial incentives adequate to protect the public's access to a variety of viewpoints from commonly owned media? Is there a difference between the relevance of the competing theories in terms of diversity of entertainment programming and news or public affairs programming? Or as applied across different media? We note that the Commission has suggested that the theory that consolidation promotes diversity in content might apply to entertainment programs and formats, but not to news and public affairs programming. Should the Commission give greater weight to viewpoint diversity in the latter area because it serves core First Amendment values of helping to ensure robust discussion of issues of public concern? Are there ways that the Commission can attempt to promote viewpoint diversity beyond structural regulation? What role if any do other legal requirements, for example

those that require broadcasters to provide political candidates access to their facilities under certain conditions, or that require cable systems to set aside channel capacity for certain uses (e.g., PEG, leased access), play in promoting diversity? Historically, broadcast stations and newspapers have been viewed as the gatekeepers in the local marketplace of ideas. Given the significant changes in the local media marketplace, is this viewpoint still accurate?

14. In addition to comments on the competing theories of viewpoint diversity described above, we seek comment on and data about actual and potential effects on diversity of the newspaper/broadcast cross-ownership rule and our proposed options for modifying the rule. Is it possible that the effect on diversity will be different depending on the size of the markets involved, or the predominance of newspapers and broadcast stations in a particular local market? Would the increase or decrease in access to diverse viewpoints affect different demographic or income groups differently? Is there some other variable that would affect the relationship between ownership diversity and viewpoint diversity? Commenters arguing for or against these theories are encouraged to provide specific analyses and data to support their arguments.

15. *Competition.* Our multiple ownership rules traditionally have been designed to serve the "twin" goals of competition and diversity. In addition, section 202(h) of the 1996 Act instructs the Commission to review each of its ownership rules, including the newspaper/broadcast cross-ownership rule, biennially to determine whether the rule is "necessary in the public interest as a result of competition," and then to tailor the rule accordingly. As we review our newspaper/broadcast cross-ownership policies, we therefore seek information about the economic impact of maintaining or modifying the rule. As we do so, we focus on the primary economic market in which broadcast stations and newspapers may compete: Advertising. As the Commission stated in its recent proceeding relaxing the dual network rule, the Commission has historically considered and promoted competition in advertising markets in order to enhance the welfare of listeners and viewers of broadcast services. This is because advertisers provide all of the financial support for programming on broadcast stations, and have a commercial incentive to prefer programming with widespread appeal, all other things remaining the same. As

more and more Americans, however, subscribe to MVPDs, and thus do not receive their television service free and over-the-air, it may be appropriate for the Commission to reexamine its approach to and emphasis on the advertising market. Who benefits from lower advertising rates? Is it the role of the Commission to ensure these benefits? What are the other economic markets in which broadcast stations and newspapers compete? Is there a better measure of the state of economic competition than the advertising market?

16. Competition analysis requires us to define the relevant product and geographic markets in which broadcasters and newspapers compete, as well as the market share of the participants within the relevant market, and then weigh the competitive benefits of consolidation (e.g., economies of scale and scope that may lead to lower costs and prices or superior products) against the harms (e.g., the exercise of market power). We seek information that would help us conduct our analysis.

17. Our first task is to define the relevant product market. Measured on an aggregate, national basis, advertisers spend about 45% of all local advertising dollars on newspapers, about 16% on radio stations, and about 15% on broadcast TV stations. There is considerable debate, however, on the extent to which advertising in one of these media is a substitute for advertising on another, and thus the extent to which they are in fact in the same product market. We seek comment on this issue. To what extent is advertising on a broadcast station a substitute for advertising in a newspaper, i.e., to what extent do advertisers shift their expenditures between broadcast stations and newspapers as one medium raises the prices it charges for advertising? Does the answer depend on whether the broadcast medium is radio or television? Does the answer depend on whether the newspaper is published daily or weekly? Do advertisers seek to use broadcast media and newspapers to reach different demographic groups? We also note that classified advertising appears to be a type of advertising for which broadcast stations do not compete with newspapers. What other types of advertising should be viewed as a separate market? Has the decrease in the number of daily newspapers, and the increase in the number of broadcast stations, affected the way in which these media compete? We note that when the Commission adopted the newspaper/broadcast cross-ownership rule, it

observed that the Department of Justice defined the relevant product market to include newspapers and broadcast stations. Currently, however, the Department of Justice views radio as a separate product market. Courts have likewise concluded that the local newspaper advertising market is a distinct antitrust market from the local media advertising markets. We seek comment on these views.

18. Are other media reasonable substitutes for advertising on broadcast stations, newspapers or both, such that these other media should be considered in the same product market? Measured on an aggregate national basis, advertising on cable now accounts for nearly 4% of the total of all local advertising dollars. Cable systems' share of the local advertising market thus appears small currently, but it is continuing to grow. For example, cable systems' share of the local advertising market was only 1% in 1990, meaning that it has quadrupled in the last decade. Does the availability of advertising on cable systems constrain broadcast stations' and newspapers' ability to raise their advertising prices? Do other MVPDs such as DBS compete with broadcast stations and newspapers in the local advertising market? Do they have plans to do so? How do banner ads on websites affect the relevant product market? How substitutable is Internet advertising for other forms of media advertising? Are there other media that should be included in the relevant market?

19. When analyzing the potential competitive effects of a proposed newspaper/broadcast combination, what is the relevant geographic market? The relevant geographic market is some local area, but what are the precise parameters of that area? We note that antitrust analysis defines the relevant geographic market as the region where a hypothetical monopolist that is the only producer of the relevant product in the region could profitably raise the price of the relevant product. Under the Commission's current rule, newspaper/broadcast combinations are prohibited when the broadcast station's service contour encompasses the entire community in which the newspaper is published. If local advertisers would respond to an advertising price increase in the community in which the newspaper is published by shifting to alternative suppliers located outside this geographic area, the relevant geographic market should be larger than the community in which the newspaper is published. We seek comment on how to define the relevant geographic market

for purposes of our newspaper/broadcast cross-ownership analysis.

20. Once we define the relevant product and geographic markets, how should we measure the market share of those that compete in the market? Market share is often measured by revenue. Local advertising revenue, however, is often not publicly available for some media. Should we therefore instead rely on circulation and ratings information, which presumably correlate to advertising rates, and therefore overall revenue and share? Commenters arguing against reliance on circulation or ratings information should propose alternative bases of measurement. Industry-accepted ratings services report on how many listeners and viewers "consume" particular content of broadcast stations. The Arbitron Company reports on the radio marketplace, and Nielsen Media Research reports on the TV marketplace. Other entities, such as SRDS, provide data on the circulation of newspapers. Based on these reports, it is possible to determine how many listeners or viewers tune in to a broadcast station for a particular program, and how many people purchase a newspaper within a particular area. How should we compare newspaper circulation with radio and television ratings?

21. What are the benefits of newspaper/broadcast combinations, not only to the combinations, but also to advertisers, and the public? The joint operation of a broadcast station and a newspaper may create efficiencies and synergies. For example, the efficiencies of a merger may enable a broadcast station and a newspaper to combine sales operations and staff, and thereby save expenses or reduce advertising prices. At least some of these savings could be passed on to advertisers in the form of lower advertising rates. Some of the additional savings in advertising expenses could also be passed on to listeners, viewers, and subscribers in the form of enhanced content. Is there a difference in efficiencies between combining a newspaper and a radio station, as compared to combining a newspaper and a TV station? Commenters in our 1998 biennial review proceeding stated that common ownership produces cost savings in business administration. We seek information on the nature and scope of efficiencies combinations might realize, and the nature and magnitude of benefits that flow through to advertisers and ultimately to consumers. We seek evidence that newspaper/broadcast combinations produce efficiencies that flow through to advertisers and consumers. Studies showing that

advertising rates for newspaper/broadcast combinations are significantly lower than advertising rates for separately owned newspapers and broadcast stations would be particularly useful.

22. What economic harms might newspaper/broadcast combinations bring? The potential harms of such combinations include creating and exercising market power. A particular combination may garner such a share of the local advertising market that advertisers believe they must advertise on the combination's media in order to reach consumers, such that the combination can charge anticompetitive prices. We seek additional information on the nature and scope of the economic harms that newspaper/broadcast combinations might bring. Studies and other evidence showing that advertising rates for newspaper/broadcast combinations are significantly higher than advertising rates for separately owned newspapers and broadcast stations would be particularly useful. It would also be useful to identify the associated harm to consumers.

23. We have sought comment on the degree to which broadcast stations and newspapers compete for advertising dollars. Are there other markets in which broadcast stations and newspapers compete? For example, broadcast stations and newspapers compete to provide news. They do so to attract readers, listeners, and viewers, in order to attract advertisers. Do they compete to provide news for other reasons that should be relevant to our analysis? How should the non-advertising economic markets in which broadcast stations and newspapers compete affect our newspaper/broadcast cross-ownership policies?

24. *Existing Newspaper/Broadcast Combinations.* As we consider the environment in which broadcast stations and newspapers operate, we seek comment in particular on the experience of existing newspaper/broadcast combinations. As noted, the Commission grandfathered most combinations that existed at the time it adopted its rule, and approximately fifty of these remain today. In addition, the Commission has granted four permanent waivers of the rule. We seek further comment on the experience of co-located newspaper/broadcast combinations, because they provide concrete examples of how the marketplace may be affected by changes to our rule. What sorts of public interest benefits or harms have these combinations produced?

25. How have combinations affected advertising rates? Have the

combinations sold advertising at lower rates than their competitors? Or are advertising rates higher in these markets? Has there been a difference between combinations involving newspapers and radio stations, as opposed to newspapers and TV stations? At least one study concluded that common ownership of a newspaper and a TV station in the same market significantly decreases newspaper advertising rates, but common ownership of a newspaper and a radio station does not.

26. How have combinations affected news? Have the combinations brought additional news outlets to the marketplace, or otherwise enhanced news coverage? We note that commenters in our 1998 biennial review proceeding stated that common ownership has enabled them to provide more news, to distribute it through new media (such as cable systems and websites), and to treat subjects in more depth. What sorts of harms have the combinations produced? Even if the amount or quality of news has increased, has viewpoint diversity decreased?

27. *Legal Issues.* As we consider our competition and diversity goals in the context of newspaper/broadcast combinations, we note the recent decision of the U.S. Court of Appeals for the D.C. Circuit, *Time Warner Entertainment v. FCC (Time Warner)*. This decision struck down two ownership rules that the Commission had adopted to implement the Cable Act of 1992. One of these rules restricted the number of subscribers that a given multiple system operator can serve to 30% of subscribers to MVPDs, and the other prohibited cable systems from filling more than 40% of their channel capacity with affiliated programming networks. In analyzing petitioners' arguments that these rules interfered with their speech in violation of the First Amendment, the court applied the "intermediate scrutiny" test on review. Under that test, a regulation will be upheld if "it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." Consistent with earlier holdings of the Supreme Court, the D.C. Circuit found the Commission's interest in "the preservation of competition" and "the promotion of diversity in speech and ideas" important government interests.

28. The D.C. Circuit also found, however, that the Commission had not

provided the "substantial evidence" necessary to show how its rules furthered its interest in "the preservation of competition," and remanded the matter to the Commission. The court explained that "[s]ubstantial evidence does not require a complete factual record—we must give appropriate deference to predictive judgments that necessarily involved the expertise and experience of the agency." Holding that the Commission had not satisfied the applicable test, it remanded the matter to the Commission for further proceedings. We seek comment on the relevance of the *Time Warner* decision to the competition goals that inform our newspaper/broadcast cross-ownership policies. Are the First Amendment interests at stake here the same as in *Time Warner*? As commenters advocate particular public policy options, we encourage them to consider the level of proof required to support them under *Time Warner*, and whether these standards are applicable in the newspaper/broadcast context.

29. We note that the court in *Time Warner* held that the Commission could not rely on its diversity goal alone to support the horizontal and vertical restraints at issue in that case. We also note, however, that the court's holding was based on its interpretation of the specific provision of the Cable Act of 1992 authorizing adoption of the cable limits, which focused on competition; the statutory source of the newspaper/broadcast cross-ownership policies, on the other hand, is the broad public interest standard of Title III. As discussed above, the Supreme Court upheld the Commission's predominant reliance on the diversity rationale to support its newspaper/broadcast cross-ownership policies. We seek comment on the impact of the *Time Warner* case on our diversity analysis, and how the marketplace changes that have occurred since the Supreme Court upheld the newspaper/broadcast cross-ownership rule may affect the First Amendment analysis.

Options

30. As the Commission stated in its first biennial review of the broadcast ownership rules, there may be circumstances in which the newspaper/broadcast cross-ownership rule may not be necessary to achieve its intended public interest benefits. We outline below a variety of different approaches that might serve the public interest. We seek comment on each of the options.

Modification of Rule or Waiver Policies

31. We could modify our newspaper/broadcast cross-ownership rule in a

number of ways to ensure that it best serves our competition and diversity goals. Should the Commission adopt any changes by amending the rule or by modifying its waiver policies? Amending the rule, including adopting clearly defined waiver standards, would provide greater guidance and predictability to the public. Modifying our waiver policies, however, would allow the Commission to fashion the most appropriate solution to any given situation. We seek comment on how we can best modify our cross-ownership rule or waiver policies to serve the public interest.

32. We outline below possible modifications we could make to the newspaper/broadcast cross-ownership rule. These proposals are based largely on revisions the Commission has made to other multiple ownership rules. Commenters supporting adoption of one or more of these proposals should explain how the proposed modification would advance our public interest goals of promoting competition and diversity. Similarly, commenters proposing modifications not discussed in this *NPRM* should explain why the public interest supports their proposal.

33. *Redefining the Geographic Area.* As explained above, the current rule prohibits common ownership of a broadcast station and a newspaper when the broadcast station's service contour encompasses the newspaper's city of publication. We seek comment on whether to redefine the geographic area in which the rule operates to that local area in which broadcast stations and newspapers compete, without regard to contour overlap. Under this approach, combinations would be permitted so long as the broadcast station and the newspaper are in different markets. This change could be made on its own, or in conjunction with other modifications, such as the ones set forth below. We seek comment on defining the relevant geographic area. In particular, we seek comment on how to define the market in which a particular newspaper competes. We have recognized that the commonly accepted geographic market for TV is the Designated Market Area, or DMA, defined by Nielsen Media Research. Does a newspaper compete throughout a DMA? A commonly accepted geographic market within the radio industry is the radio metro, defined by The Arbitron Company. Does a newspaper compete throughout a radio metro? How should we treat radio markets that are not located in a radio metro? What will be the effect of any proposed changes in the geographic market definition on competition and diversity?

34. "Market Concentration" Standard. When the Commission revised the TV duopoly rule, it decided not only to redefine the geographic scope of the rule to enable stations in separate markets to combine, but also to permit smaller stations in the same market to combine with each other or with a larger station. One option for modifying our newspaper/broadcast cross-ownership policies therefore might be to adopt a "market concentration" standard of some kind. For example, the Commission might permit combinations between broadcast stations and newspapers, so long as their combined or individual market shares do not exceed a certain level.

35. We seek comment on a "market concentration" standard. What is the appropriate measure of "market concentration" for broadcast stations and newspapers, advertising or audience share? How should we define the broadcast stations and newspapers with the largest market share? With respect to newspapers, should we identify the largest participants in a local area by their circulation? What circulation should count as large, and what newspaper publications should count as being in the market? As we asked, what should be the geographic boundaries of the local area over which we measure newspaper circulation?

36. We seek comment on how we should define the top ranked TV stations in a market. We note that, in revising the TV duopoly rule, the Commission decided to prohibit combinations between stations when both are ranked within the top four in the DMA. The Commission explained that "[t]hese stations generally have a large share of the audience and advertising in their area, and requiring them to operate independently will promote competition. In addition, our analysis has indicated that the top four-ranked stations in each market generally have a local newscast, whereas lower-ranked stations often do not have significant local news programming, given the costs involved. Permitting mergers among these two categories of stations, but not among the top four-ranked stations, consequently might pose less concern over diversity of viewpoints in local news presentation, which is at the heart of our diversity goal." We seek comment on the relevance of this reasoning to our newspaper/broadcast cross-ownership policies.

37. We also seek comment on how to define the top ranked radio stations in a market. We note that, according to our Mass Media Bureau's most recent report on the radio industry, "[t]he two largest

radio firms in each radio market have, on average, 70 percent of the market's radio advertising revenue." Would it therefore be appropriate to prohibit combinations between the two largest radio station owners, or radio station owners with stations that have an advertising or audience share that exceeds a certain limit, and the largest newspapers in the same market? We also note, however, that in revising its radio/TV cross-ownership rule, the Commission treated all radio stations similarly, and thus permitted TV stations to combine with radio stations up to a voice-dependent numerical limit, without regard to the radio station's market share. Would it therefore be appropriate not to restrict the type of radio stations that can combine with newspapers? Regardless of whether we limit the kind of radio station that a newspaper may acquire, should we limit the number of radio stations it may acquire? How many radio stations should we permit to be commonly owned with a newspaper? Should any limit depend on the market share of the radio station(s) involved? Should the appropriate number depend on the other media properties attributed to the radio station owner, such as broadcast TV or cable systems? We seek comment on the mechanism that will best serve the public interest.

38. "Voice Count" Standard. Another option for modifying the newspaper/broadcast cross-ownership policies would be to permit combinations so long as a certain number of independently owned media "voices" would remain in the market post-merger. This approach would be consistent with the recently revised radio/TV cross-ownership rule, which permits common ownership of a TV station and up to four radio stations if at least ten media voices would remain in the market, and up to six radio stations if at least twenty media voices would remain in the market. Several commenters in the 1998 biennial review proceeding favored such an approach. Under our current radio/TV cross-ownership rule, media "voices" include TV stations within the DMA, radio stations within the radio market within the DMA, newspapers published four or more days a week with a circulation of 5% or more within the DMA, and cable (as one voice) if generally available in the DMA. This approach would ensure a "floor" of independently owned outlets, regardless of market size. However, since the requirement that a minimum number of voices remain in a market necessarily disfavors combinations in markets with fewer

voices, are there alternative approaches that might provide relief in these markets but still preserve our competition and diversity goals? If we were to adopt a voice count approach, how should we resolve mutually exclusive applications, i.e., applications filed at the same time both of which could not be granted without reducing the "floor" that our policy would be designed to protect against?

39. One particular formulation of the newspaper/broadcast cross-ownership policy might treat a daily newspaper as the equivalent of a TV station, and thus permit common ownership of newspapers and several radio stations, or one TV station, if a certain number of voices would remain in the market. Or are newspapers a sufficiently distinct medium of expression, such that they should not be treated similar to a TV station? We seek comment on whether it would be appropriate to adopt a voice count test in the newspaper/broadcast context, and if so, on how many voices we should require, and what voices should qualify. In revising the radio/TV cross-ownership rule, the Commission decided to count toward the number of voices necessary for a particular transaction only those newspapers published at least four days a week with a circulation of 5% or more in the DMA. The Commission explained that "[o]ur intent in this regard is to include only those newspapers that are widely available throughout the DMA and that provide coverage of issues of interest to a sizeable portion of the population. Although we recognize that other publications also provide a source of diversity and competition, many of these are targeted to particular communities and are not accessible to, or relied upon by, the population throughout the local market." Is this rationale equally appropriate for determining the newspapers with such a significant market presence that we should not permit them to combine with co-located broadcast stations that also have a significant presence?

40. In the radio/TV cross-ownership context, the Commission decided to count cable systems because they provide some local information, but to count them as only one voice because, despite the many channels available on the systems, the cable operator either originates or selects almost all of the programming. Should we give greater weight to the fact that many cable systems provide leased access and PEG channels, which can provide local information, given that the cable system does not control the content of these channels? For the revised radio/TV cross-ownership rule, the Commission

also decided not to count other media, such as other MVPDs and websites, because it concluded that they generally do not provide local news or were not widely available. The Commission also decided not to count media such as billboards, direct mail, and yellow pages, because they are not meaningful sources of information on issues of local concern. We seek comment on whether recent changes in the media marketplace, including DBS' potential for providing local news and information and the growing availability of local content on Internet websites, should impact these decisions.

41. We also note that, in revising the TV duopoly and radio/TV cross-ownership rules, the Commission decided to count only those TV stations that have service contours that overlap with the service contour of at least one of the stations in a proposed combination. The Commission did so because some TV stations in a DMA may serve very local communities, such that allowing them to combine based on circumstances elsewhere in the DMA disserved competition and diversity objectives. If we decide to adopt a voice count standard for our newspaper/broadcast cross-ownership policies, should we similarly limit the circumstances in which a particular voice counts to ensure that the test adequately promotes our goals? If so, how could we accomplish this in the newspaper/broadcast context? For example, how could we ensure that the only local newspaper and the only local TV station that serve a community do not combine and threaten competition and diversity in the community?

42. *"Market Concentration"/"Voice Count" Standard.* Another option for modifying the newspaper/broadcast cross-ownership policies would be to combine the "market concentration" and "voice count" standards. Under this approach, a combination would be permitted so long as both parties do not have a certain market share (combined or individual), and so long as a minimum number of voices would remain in the market post-merger. This approach would be consistent with the recently revised TV duopoly rule, which permits common ownership of two TV stations within the same DMA if both are not ranked among the top four in the market, and at least eight independently owned TV stations would remain in the DMA post-merger. As the Commission explained when it revised the TV duopoly rule, "the station rank and voice criteria are designed to protect both our competition and diversity concerns." As the Commission further explained, the combined standard

permits weaker market participants to combine with each other, or with a larger participant, and thereby preserves and strengthens their ability to compete.

43. A particular formulation might blend the TV duopoly rule (which combines both a market concentration and voice count standard) with the radio/TV cross-ownership rule (which is a cross-media policy). For example, a combination of a smaller newspaper and a certain number of radio stations might be permitted so long as a minimum number of media voices would remain. We seek comment on such options, and on what level or market concentration, numerical limits, or media combinations would be appropriate.

44. *Waiver Standards.* As indicated, under current policy, the Commission presumes it is in the public interest to waive the newspaper/broadcast cross-ownership rule if: (1) A combination could not sell a station; (2) a combination could not sell a station except at an artificially depressed price; (3) separate ownership and operation of a newspaper and a station could not be supported in a locality; or (4) for whatever reason, the purposes of the rule would be disserved. Should the Commission amend its waiver policies? What standards would best satisfy our competition and diversity goals?

45. We note that, in amending the TV duopoly and radio/TV cross-ownership rules, the Commission presumed it was in the public interest to waive the rules if at least one of the stations had failed. To prove that a station has failed, an applicant must show that: (1) The station has been dark for at least four months or is involved in involuntary insolvency proceedings and (2) the in-market buyer is the only entity willing and able to operate the station, and sale to an out-of-market buyer is impossible except at an artificially depressed price. In addition, the Commission presumes that it is in the public interest to waive the TV duopoly rule if at least one of the stations is failing, or authorized but not yet constructed. To prove that a station is failing, an applicant must show that: (1) At least one of the merging stations has a low audience share; (2) the financial condition of at least one of the stations is poor; (3) the merger will produce public interest benefits that outweigh harm to competition and diversity; and (4) the in-market buyer is the only entity willing and able to operate the station, and sale to an out-of-market buyer is impossible except at an artificially depressed price. To qualify for a waiver under the "unbuilt station" standard, the applicant must show that: (1) The combination will result in the construction of an

authorized but as yet unconstructed station; (2) the permittee has made reasonable efforts to construct; and (3) the in-market buyer is the only entity willing and able to operate the station, and sale to an out-of-market buyer is impossible except at an artificially depressed price. Should these standards be adapted to newspaper/broadcast cross-ownership policies, such that combinations would be permitted if one of the parties to the combination has failed, is failing, or if the combination would result in new service?

46. *Retention Period.* When the Commission adopted the newspaper/broadcast cross-ownership rule, the Commission had to grapple with the issue of how long a broadcast licensee could retain a daily newspaper it acquired in a community in which it already owned a broadcast station. It resolved this issue by stating:

if a broadcast station licensee were to purchase one or more daily newspapers in the same market, it would be required to dispose of its stations there within 1 year or by the time of its next renewal date, whichever is longer. If the newspaper is purchased less than a year from the expiration of the license, the renewal application may be filed, but it will be deferred pending sale of the station, if necessary, until the year has expired.

At the time this policy was adopted, the license period for broadcast stations was three years. Thus, a broadcaster obtaining a local daily newspaper was to be given until its next renewal, which was no more than three years away, or, at least one year, whichever period was longer, to divest itself of one of the media properties. Now, however, the license term for a broadcast station is eight years. We seek comment on whether or not, if we decide to retain the newspaper/broadcast cross-ownership prohibition in some form, we should modify the retention policy that applies to acquisition of a newspaper by a broadcast licensee. We also seek comment on whether the Commission should require broadcast licensees to notify the Commission at the time they acquire a daily newspaper in a market in which they hold a television or radio station license. We also seek comment on whether, if we decide to shorten the length of time a licensee has to come into compliance after purchasing a newspaper, we should apply the current criteria to existing combinations.

47. *Structural Separation.* As stated, we have modeled many of the proposals after approaches the Commission has taken in amending other broadcast cross-ownership rules, such as the TV duopoly rule and the radio/TV cross-ownership rule. Should we, however,

instead allow combinations subject to certain structural separation requirements? We note that the Canadian Radio-television Telecommunications Commission (CRTC) recently concluded to allow common ownership of newspapers and TV stations, but required the combinations to maintain separate management and presentation structures for the news operations of their newspapers and TV stations. The CRTC noted that common ownership could create more efficient news operations, but it also was concerned that common ownership "could potentially lead to the complete integration of the owner's television and newspaper news operations. This integration could eventually result in a reduction of the diversity of the information presented to the public and of the diversity of distinct editorial voices available in the markets served." The CRTC thus required separation of news management functions, but not newsgathering activities. Should we consider an approach similar to that of the CRTC? We note that, although the Commission traditionally has not promulgated structural separation requirements as part of its broadcast ownership rules, it has in other contexts. For example, in order to approve the application of a Bell Operating Company (BOC) to provide in-region long-distance service, the Commission must find that the BOC will provide the service through a separate affiliate that satisfies a variety of statutory criteria. Would structural separation requirements both allow broadcast stations and newspapers to realize the economic benefits of combined operations, but at the same time preserve the interest of the public in having access to distinct editorial viewpoints? Have grandfathered combinations been able to realize economic efficiencies from consolidating their broadcast and newspaper news operations, but still maintain editorial independence? What sort of protections and structural separation requirements would be necessary to ensure that editorial independence would not be compromised?

Elimination/Retention of the Rule

48. Some commenters in response to our biennial review argued that the Commission should either completely eliminate or retain the newspaper/broadcast cross-ownership rule in its current form. Those who supported retaining the rule argued that many of the new media outlets do not add to viewpoint diversity on the local level,

and that new programs by the same broadcasters do not add to viewpoint diversity. They also pointed out that current policies already allow broadcast stations and newspapers to realize many economic efficiencies, because the current rule permits them to form joint ventures, and it permits broadcast stations to merge with newspapers when the broadcast station's service contour does not encompass the newspaper's city of publication. Those who supported eliminating the rule argued that the multimedia markets are competitive and provide a wide variety of information sources. They also contended that the efficiencies of combinations are not driven by consolidation of content or editorial decisions, and have enabled grandfathered combinations to air more extensive news and public affairs programming and to develop new media ventures. If the rule were eliminated, newspaper/broadcast combinations would be permitted, subject only to the antitrust laws and Commission review of an application for grant, renewal, or transfer of a particular broadcast license. We seek comment on the appropriateness of either retaining or eliminating entirely our newspaper/broadcast cross-ownership rule. In particular, we seek comment on whether prophylactic, structural regulation remains necessary to maintain sufficiently competitive local advertising markets, as well as sufficiently diverse sources of local information. Are the antitrust laws sufficient to protect our competition goals? Is the rule necessary in its current form to protect our diversity goals?

49. Is there some rationale for eliminating the rule as it applies to certain combinations? For example, should we eliminate the rule for newspaper/radio combinations, but retain the rule in some form for newspaper/TV combinations? Are there different efficiencies from newspaper/radio combinations as compared to newspaper/TV combinations? Would the efficiencies of combinations allow radio stations to provide additional news programming? Would limiting deregulation to newspaper/radio combinations best serve our diversity goals, since Americans have reported that they rely more on TV stations and newspapers than radio stations for local news? In addition to the options presented, we encourage commenters to propose additional options not suggested here.

Conclusion

The Commission adopted its newspaper/broadcast cross-ownership

rule twenty-five years ago, when the local media marketplace was significantly different than it is today. Through this proceeding, we seek to examine our cross-ownership policies in the context of the current realities of today's local media marketplace, in order to ensure that our rules serve the public interest as effectively as possible.

Administrative Matters

50. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 3, 2001, and reply comments on or before January 7, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

51. Comments filed through ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Post Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

52. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street SW., TW-A325, Washington, DC 20554. Parties who choose to file by paper should also submit comments on diskette. These diskettes should be addressed to: Wanda Hardy, 445 Twelfth Street SW., 2-C221, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, docket number of the proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not

an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor.

53. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418-7426, TTY (202) 418-7365, or bmillin@fcc.gov.

54. *Ex Parte Rules*. This is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

55. *Initial Regulatory Flexibility Analysis*. With respect to this *NPRM*, an Initial Regulatory Flexibility Analysis ("IRFA") is set forth below. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an IRFA of the possible significant economic impact on small entities of the proposals contained in this *NPRM*. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the broadcasting and newspaper industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM*, but they must have a distinct heading designating them as responses to the IRFA.

56. *Initial Paperwork Reduction Act Analysis*. This *NPRM* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the public to take this opportunity to comment on the information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1996. Public and agency comments are due at the same time as other comments on the *NPRM*. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; (c) 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. In addition to filing comments with the Secretary, a copy of any comments on information collections contained in this *NPRM* should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street SW., 1-C804, Washington, DC 20554, or over the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street NW., Washington, DC 20503, or over the Internet to edward.springer@omb.eop.gov.

Ordering Clauses

57. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and section 202(h) of the Telecommunications Act of 1996, this *NPRM* is adopted.

58. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

59. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of, Proposed Rules

60. The goal of this proceeding is to consider possible revisions to the newspaper/broadcast cross-ownership rule, which prohibits common ownership of broadcast stations and newspapers within the same geographic area. The Commission adopted the rule in 1975 to preserve a diversity of information sources for the public. At that time, there were fewer local media outlets than there are today. The rule in its current form therefore may no longer be necessary to achieve its intended public interest benefits in certain circumstances. The Commission thus

committed last year to initiate this proceeding.

Legal Basis

61. Authority for the actions proposed in the *NPRM* may be found in sections 1, 2(a), 4(i), 303, 307, 309 and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309 and 310, and section 202(h) of the Telecommunications Act of 1996.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

62. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

63. The newspaper/broadcast cross-ownership rule applies to daily newspapers and broadcast stations. As set forth in the *NPRM*, as of the year 2000, there were 1,422 daily newspapers published. The SBA defines a newspaper publisher with less than 500 employees as a small business. According to the 1992 Economic Census, only 138 newspaper publishers had less than 500 or more employees. The data does not distinguish between newspaper publishers that publish daily and those that publish less frequently, and the latter are more likely to be small businesses than the former because of the greater expense to publish daily. Thus, since the newspaper/broadcast cross-ownership rule applies only to daily newspapers, it is likely that less than 138 small newspaper publishers would be affected by the rule.

64. As set forth in the *NPRM*, as of June 30, 2001, the Commission had licensed 1,678 full-power TV stations, 2,396 low power TV stations, and 232 Class A TV stations. The SBA defines television broadcasting establishments that have \$10.5 million or less in annual receipts as a small business. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database on March 14, 2001, fewer than 800 commercial television broadcast stations have revenues of \$10.5 million or less. We note, however, that under SBA's definition, revenues of affiliates that are

not television stations should be aggregated with the television station revenues in determining whether a concern is small. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the newspaper/broadcast cross-ownership rule, because the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies.

65. As set forth in the *NPRM*, as of June 30, 2001, the Commission had licensed 12,392 radio stations. The SBA defines a radio station that has \$5 million or less in annual receipts as a small business. According to Commission staff review of BIA Publications Inc. Master Access Radio Analyzer Database on March 14, 2001, about 10,400 commercial radio stations have revenue of \$5 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the newspaper/broadcast cross-ownership rule.

Description of Projected Recording, Recordkeeping, and Other Compliance Requirements

66. We anticipate that none of the proposals presented in the *NPRM* will result in an increase to the reporting and recordkeeping requirements of broadcast stations or newspapers.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

67. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

68. This *NPRM* invites comment on a number of alternatives to modify or eliminate the newspaper/broadcast cross-ownership rule. The Commission will also consider additional significant alternatives developed in the record.

69. With respect to modification of the rule, the *NPRM* proposes five specific options. First, the Commission might redefine the geographic area in which the rule operates to allow broadcast stations and newspapers to combine if they are in different markets, without regard to whether the station's service contour encompasses the newspaper's city of publications (the current standard). This option might permit more entities, including small newspapers and stations, to combine. In the second option, the "market concentration" standard, the Commission would allow newspapers and stations to combine, provided their combined market share would not exceed a defined limit. Under the third option, the "voice count" standard, the Commission would permit combinations so long as a certain number of independently owned media "voices" would remain in the market. The fourth option would combine the "market concentration" and the "voice count" standards. In each of these several options, the Commission would limit the number and type of combinations in any market to ensure that no market participant attains unconstrained or unrivaled market power or otherwise controls the information sources available. These options would thus permit some smaller businesses to combine to realize economic efficiencies and strengthen their ability to compete, but at the same time ensure that the markets in which they operate do not become too concentrated. Under the fifth option, the Commission would permit newspapers and stations to combine, subject to a structural separations approach. This would permit newspapers and stations to combine and realize economic efficiencies but preserve editorial diversity.

70. In addition to, or as an alternative to, modifying the current rule, the circumstances under which the newspaper/broadcast cross-ownership rule should be waived could be enhanced. In particular, the *NPRM* seeks comment on whether a waiver should be granted if one of the parties to the combination has failed, is failing, or if a new service would result. This would benefit small entities that wish to combine with another in order to save their business, compete more efficiently, or better realize economic efficiencies through economies of scale.

71. As an alternative to modifying the current rule and/or adding to the list of circumstances under which the rule should be waived, the rule could be eliminated entirely. The *NPRM* seeks comment on this alternative. Under this

alternative, entities, including small entities, would be subject only to the antitrust laws and the Commission's general public interest review when granting, renewing or transferring a license.

Federal Rules that May Overlap, or Conflict With the Proposed Rules

72. The rules under consideration in this proceeding do not overlap, duplicate, or conflict with any other rules.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 01-24950 Filed 10-4-01; 8:45 am]
BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 092501C]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery

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

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS); request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intention to prepare an SEIS in accordance with the National Environmental Policy Act for Framework Adjustment 36 to the Northeast Multispecies Fishery Management Plan (FMP). The intent of this action is to reduce regulatory discards in the Gulf of Maine (GOM) cod fishery; address reductions in fishing mortality needed to ensure that the mortality objectives for Georges Bank (GB) cod, GB haddock, GB yellowtail flounder, GOM cod, and Southern New England (SNE) yellowtail flounder are achieved; allow tuna purse seine vessels access to the current closed areas; and expand the current Small Mesh Northern Shrimp Fishery Exemption Area.

DATES: Written comments on the intent to prepare the SEIS must be received on or before 5 p.m., local time, November 5, 2001.

ADDRESSES: Written comments should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street,

Mill 2, Newburyport, MA 01950. Comments may also be sent via fax to (978) 465-0492. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Background

Amendment 7 to the FMP (61 FR 27710, May 31, 1996) specifies a procedure for setting annual target total allowable catch (TAC) levels for GB cod, GB haddock, GB yellowtail flounder, GOM cod, SNE yellowtail flounder and an aggregate TAC for the remaining regulated multispecies. This procedure requires that the Council's Multispecies Monitoring Committee (MSMC) annually review the best available scientific information, and recommend annual target TAC levels for these key groundfish stocks, as well as management options to achieve the FMP objectives.

Calculation of the annual TAC levels by the MSMC is based on the biological reference points of F_{max} for GOM cod and $F_{0.1}$ for the remaining stocks of cod, haddock, and yellowtail flounder. The MSMC also intends to estimate the TAC associated with $F_{0.1}$ for GOM cod, since this is considered the more appropriate biological reference point by the MSMC and is expected to be incorporated into Amendment 13, which is currently under development by the Council.

For the 2001 fishing year, the MSMC developed recommendations for target TACs that were consistent with the rebuilding targets specified in Amendment 7. However, the status of GOM cod was not clear due to the difficulty in characterizing discards in the fishery in 1999 and 2000. The MSMC report for the 2001 fishing year noted that better estimates of the fishing mortality rate (F) in 1999 and 2000 for GOM cod would be available once results from the 33rd Stock Assessment Review Committee (SARC 33) were completed in June 2001.

Although the Council did not develop an annual adjustment framework for fishing year 2001, in response to the MSMC report and public comment concerning regulatory discards in the GOM cod fishery, the Council voted to make the January 2001 Council meeting the first framework (Framework 36) meeting for adjustment measures that would decrease regulatory discards of GOM cod.

At its initial framework meeting in January 2001 to address regulatory discards in the GOM cod fishery, the Council voted to maintain the fishing year 2000 management measures for GOM cod for the 2001 fishing year until additional information was available from SARC 33. Results from SARC 33 were presented to the Council at its July 2001 meeting. For the GOM cod fishery, SARC 33 advised that fishing mortality be reduced by approximately 63 percent to meet the Amendment 7 F target of $F_{max}=0.27$. If this F value is achieved for GOM cod in 2002, then the above average 1998 year class will likely experience enhanced spawning potential.

In light of the SAW 33 advice, the Council tasked its Multispecies Oversight Committee to develop management options to reduce regulatory discards and address the fishing mortality reductions needed for the GOM cod fishery. Management measures considered by the Committee thus far include additional GOM closures and/or closure modifications, extension or adjustment to the Western GOM Closed Area, trip limit revisions, mesh-size increases, modifications to the days-at-sea accounting scheme, and equivalent measures to reduce recreational catch. Although the measures discussed to date focus on the GOM cod fishery, the Council also intends that this action be the annual adjustment for the 2002 fishery. Therefore, other management measures may also be developed to ensure that the Amendment 7 F objectives are reached for GB cod, GB haddock, GB yellowtail flounder, and SNE yellowtail flounder if so recommended by the MSMC.

However, given the complexity of this task and the magnitude of the required reductions in F and their associated impacts, the Council and NMFS have determined that significant impacts on the human environment may result, and preparation of an SEIS for this action will be necessary to examine the cumulative effects and consequences of the short-term measures on the human environment. In preparing the SEIS, the Council and NMFS will take into account, in addition to comments received in response to this document, all comments that have already been submitted and all discussions that have occurred in Council meetings before the publication of this document.

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

Dated: October 1, 2001.

Bruce C. Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 01-25036 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-22-5

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 091301C]

RIN 00648-AL98

Fisheries of the Exclusive Economic Zone Off Alaska; Revision of Overfishing Definitions for the Salmon Fishery

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

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted for Secretarial review Amendment 6 to the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone off the Coast of Alaska (Salmon FMP). This amendment is necessary to revise the overfishing definitions for the salmon fishery authorized under the Salmon FMP. This action is intended to ensure that conservation and management measures continue to be based on the best scientific information available and to advance the Council's ability to achieve, on a continuing basis, the optimum yield from the salmon fisheries under its jurisdiction.

DATES: Comments on the amendments must be submitted on or before December 4, 2001.

ADDRESSES: Comments on this amendment should be submitted to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. NMFS will not accept comments by e-mail or internet. Copies of Amendment 6 to the Salmon FMP, and the Environmental Assessment (EA) prepared for the amendment are available from NMFS.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907-586-7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit each fishery management plan (FMP) or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS immediately announce a submitted FMP or FMP amendment is available for public review and comment. This action constitutes such notice for Amendment 6 to the Salmon FMP. NMFS will consider the public comments received during the comment period in determining whether to approve this FMP amendment.

On October 11, 1996, the President signed into law the Sustainable Fisheries Act (Pub. L. 104-297) which made numerous amendments to the Magnuson-Stevens Act. Section 3(29) of the amended Magnuson-Stevens Act defines the terms "overfishing" and "overfished" to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield (MSY) on a continuing basis (Section 3(29)), and requires that all fishery management plans:

"specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or NMFS has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery" (Section 303(a)(10)).

Section 301(a) of the Magnuson-Stevens Act establishes national standards for fishery conservation and management, and requires that all FMPs create management measures consistent with those standards. National standard 1 requires that conservation and management measures shall "prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." Pursuant to section 301(b) of the Magnuson-Stevens Act, NMFS issued national standard guidelines to provide comprehensive guidance for the development of FMPs and FMP amendments that comply with the national standards (May 1, 1998, 63 FR 24212). These guidelines are codified in Title 50, Code of Federal Regulations, part 600 (50 CFR 600.305-600.355).

The Salmon FMP allows a commercial troll fishery in the exclusive economic zone (EEZ) off southeast Alaska (SEAK EEZ), and closes the remaining EEZ in central and western Alaska to commercial salmon fishing. All other salmon fishing occurs either in waters of the State of Alaska (State) or in one of three historical State-managed net fishing areas that extend into the EEZ. The fisheries in these three historical fishing areas are not covered by the Salmon FMP. The Salmon FMP defers management of the commercial troll fishery to the State and the U.S.-Canada Pacific Salmon Commission (PSC).

In June 1998, the Council adopted Amendment 6 to the Salmon FMP. In October 1998, the NMFS Alaska Fisheries Science Center (AFSC) stated it could not certify that the overfishing definitions comply with the national standard guidelines (50 CFR 600.310) without a considerably more explicit analysis. NMFS worked with scientists from the Alaska Department of Fish and Game (ADF&G) to analyze how the State's policies comport with the national standard guidelines.

In consultation with the Council and the State, NMFS revised the preferred alternative to include the status determination criteria recommended by the national standard guidelines. Using the State's sustainable salmon fisheries policy and salmon escapement goal policy and the June 1999 Amendment to the Pacific Salmon Treaty, NMFS developed an MSY control rule, fishing mortality rate, maximum fishing mortality threshold, and minimum stock size threshold for the chinook salmon (*Oncorhynchus tshawytscha*) and coho salmon (*O. kisutch*) stocks caught in the troll fishery in the SEAK EEZ. The chinook and coho stocks serve as indicator stocks for the stock complex of salmon caught in this fishery. These status determination criteria specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished or when overfishing is occurring. This analysis is presented in the EA for Amendment 6 (see ADDRESSES).

In June 2001, the Council and its Scientific and Statistical Committee reviewed the revised preferred alternative. The Council concurred that the revised preferred alternative is consistent with the alternative recommended by the Council in June 1998 in that it is consistent with State policies.

The Director of the AFSC, NMFS, has certified without reservation that the proposed definitions of overfishing: (1) Have sufficient scientific merit; (2)

contain the criteria for stock determination specified in 50 CFR 600.305 (d)(2); (3) provide a basis for objective measurement of the status of the stock against the criteria; and (4) are operationally feasible.

Through the Salmon FMP, the Council intends to conserve and manage the salmon resources in the North Pacific Ocean and to allow the fisheries in State and EEZ waters to be managed as one fishery. Regulations for the Alaska salmon fishery are made by the Alaska Board of Fisheries (Board) consistent with State and Federal laws and with negotiated agreements of the PSC. ADF&G manages the fishery inseason and issues emergency regulations to achieve conservation objectives and to implement allocation policies established by the Board.

The SEAK troll fishery is a mixed-stock, mixed-species fishery that primarily targets chinook and coho salmon, with pink salmon (*O. gorbuscha*), chum salmon (*O. keta*), and sockeye salmon (*O. nerka*) taken incidentally. The catch in this fishery represents approximately 6 percent of the total chinook and coho salmon landed by all salmon fisheries in Southeast Alaska (1991-1996 average). This fishery harvests less than 1 percent of the total harvest of pink, chum, and sockeye salmon occurring in Southeast waters. The chinook salmon originate in the waters of British Columbia and the coho salmon originate mainly in Alaska waters. The chinook salmon stocks that originate in Canada or pass through U.S.-Canada boundaries are managed by the PSC under the Pacific Salmon Treaty.

Amendment 6 would amend the Salmon FMP by providing overfishing definitions, consistent with the national standard guidelines and the FMP's policy of Federal/State coordination. The overfishing definitions are based on State salmon management and the Pacific Salmon Treaty.

The State manages Alaska's salmon fisheries to achieve MSY, to the extent possible, by maintaining a constant level of escapement on an annual basis regardless of run strength. The achievement of MSY requires a high degree of management precision and scientific information regarding the relationship between escapement and subsequent return. Escapement targets for major stocks of Alaska salmon are continuously evaluated based on new data and improved spawner-recruit databases. To this end, the State aggressively pursues the further development of escapement enumeration programs, inseason fishery management programs, and scientific methods to determine escapement levels

that produce MSY. In situations where the State lacks the necessary management program and scientific information to manage for MSY, fishery management measures are adopted to ensure that harvests are sustainable.

The Pacific Salmon Treaty defines overfishing as fishing patterns that result in escapements significantly less than those required to produce MSY. The overfishing definition notwithstanding, management agencies recognize that failure to meet spawner escapements also may result from mortality unrelated to fishing and that fishery management actions alone may not adequately address the situation.

The overfishing definitions proposed in Amendment 6 separate the salmon stocks caught in the SEAK EEZ into three tiers. The status determination criteria that are specified for the chinook and coho stocks serve as the criteria for the stock complex caught by the fishery. Tier 1 is chinook salmon stocks covered by the Pacific Salmon Treaty. The Pacific Salmon Treaty specifies a harvest based on a relationship between a pre-season abundance index generated by the PSC's Chinook Technical Committee and a harvest control rule specified in the Treaty. The Pacific Salmon Treaty also provides for an inseason adjustment to the harvest level based on an assessment

of inseason data. In addition, decreases in the allowable catch are triggered by conservation concerns of specific stock groups. This abundance-based system reduces the risk of overharvest at low stock abundance while allowing increases in harvest with increases in abundance, as with the management of the other salmon fisheries in Alaska.

Tier 2 and Tier 3 are salmon stocks that originate mainly in Alaska waters managed by the Board and ADF&G. Tier 2 are coho salmon stocks. Tier 3 stocks are coho, pink, chum, and sockeye salmon stocks managed as mixed-species complexes, with coho salmon stocks as indicator stocks.

The overfishing definitions for Tiers 2 and 3 are based on the State's escapement goal policy. The coho salmon catch is managed to provide sustained yield of the many Alaska coho salmon stocks present in the area while minimizing the catch of chinook salmon during chinook salmon non-retention periods. ADF&G monitors all coho salmon fisheries to determine if the number of coho salmon reaching inside areas will be adequate to provide for spawning requirements. ADF&G closes the fisheries by emergency order if the escapement goals are not being met. Management of coho salmon is based on aggregate abundance because information on the status of the many

coho salmon stocks in Southeast Alaska is limited and the lack of a general coho salmon stock identification technique prevents the assessment of run strength of individual stock groups contributing to these mixed-stock fisheries.

Therefore, information available on individual coho salmon indicator stocks is considered in management actions.

The Council and NMFS prepared an EA for Amendment 6 that describes the management background, the purpose and need for action, the management action alternatives, and the environmental and the socio-economic impacts of the alternatives. A copy of the EA can be obtained from NMFS (see **ADDRESSES**).

NMFS will consider the public comments received during the comment period in determining whether to approve Amendment 6 to the Salmon FMP. To be considered, a comment must be received by close of business on the last day of the comment period (see **DATES**), regardless of the comment's postmark or transmission date.

Dated: September 28, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 01-25038 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 66, No. 194

Friday, October 5, 2001

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

Agricultural Marketing Service

[Docket No. FV-01-369-EXT.]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service

ACTION: Notice to re-open the nomination date.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Fruit and Vegetable Industry Advisory Committee (Committee). The purpose of the Committee is to review the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary of Agriculture on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. USDA seeks nominations of individuals to be considered for selection as Committee members. The unprecedented terrorist attacks on September 11, 2001 in Washington DC and New York disrupted mail services throughout the country. Therefore, USDA has established a new due date for submission of nominations.

DATES: Written nominations must be received on or before October 9, 2001.

ADDRESSES: Nominations should continue to be sent to Mr. Robert C. Keeney, Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, Room 2077 South Building, P.O. Box 96456, Washington, DC 20090-6456. For assistance call (202) 720-4722, e-mail—robert.keeney@usda.gov.

SUPPLEMENTARY INFORMATION: No changes have been made to the register request except a revision of the nomination date. Membership will consist of twenty (20) members who represent the fruit and vegetable industry and will include; six (6) representatives of fresh fruit and vegetable growers/shippers; four (4)

representatives of fresh fruit and vegetable wholesalers; two (2) representatives of brokers; two (2) representatives of retailers; two (2) representatives of fruit and vegetable processors; two (2) representatives of foodservice suppliers; one (1) state department of agriculture official; and one (1) trade association representative.

The Secretary of Agriculture invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Committee. Nominations should describe and document the proposed member's qualifications for membership to the Committee. The Secretary of Agriculture seeks a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs.

Individuals receiving nominations will be contacted and biographical information must be completed and returned to USDA within 10 working days of notification, to expedite the security clearance process that is required before selection by the Secretary of Agriculture.

Equal opportunity practices will be followed in all appointments to the Committee in accordance with USDA policies. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Dated: October 2, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 01-25197 Filed 10-3-01; 11:54 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Fiber-Gels Technologies, Inc. of Plant City, Florida, an exclusive license to U.S. Patent No. 5,766,662, "Dietary Fiber Gels for Calorie Reduced Foods and Method for Preparing Same," issued on June 16, 1998. Notice of Availability of this invention for licensing was published in the Federal Register on January 8, 1998.

DATES: Comments must be received on or before November 5, 2001.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4-1158, Beltsville, Maryland 20705-5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301-504-5257.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Fiber-Gels Technologies, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 01-25028 Filed 10-4-01; 8:45 am]

BILLING CODE 3410-03-P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the Federally owned invention disclosed in U.S. Patent Application Serial No. 09/758,663, "Process for Increasing the Rate of Hydration of Food Crop Seeds," filed January 11, 2001, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to SunWest Foods, Inc. of Davis, California, an exclusive license for all applications to grains, but excluding applications to beans.

DATES: Comments must be received on or before January 3, 2002.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4-1158, Beltsville, Maryland 20705-5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301-504-5257.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as SunWest Foods, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 01-25029 Filed 10-4-01; 8:45 am]

BILLING CODE 3410-03-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED.

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List commodities and services to be

furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 5, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each commodity or service will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Stapler

7520-00-240-5727

NPA: Occupations, Inc., Middletown, New York

Government Agency: GSA/Office Supplies and Paper Products Commodity Center

Shirt, Sleeping

8415-00-890-2101

8415-06-890-2102

8415-00-890-2103

8415-00-890-2099

NPA: BOST Human Development Services, Fort Smith, Arkansas
Government Agency: Defense Supply Center Philadelphia

Services

Mailroom Operation

Internal Revenue Service

San Patricio Office Center Building

#7 Tabonuco Street

Guaynabo, Puerto Rico

NPA: The Corporate Source, Inc., New York, New York

Government Agency: Internal Revenue Service.

Shipboard & Shore-Based Logistics

Worldwide Facilities for the Navy

Various other DOD Military Installations

(20% of the Government Requirement)

NPA: Association for Retarded Citizens of the

Peninsula, Inc Hampton, Virginia

Government Agency: TRADOC Acquisition Center, Fort Eustis, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01-25042 Filed 10-4-01; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 5, 2001.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603-7740.

SUPPLEMENTARY INFORMATION: On April 27, June 29, July 27, August 3, August 10 and August 17 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 21118, 34611, 39142, 40671/72, 42198 and 43108) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified

nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

EcoLab Water Soluble Cleaners/Detergents

7930-00-NIB-0134
7930-00-NIB-0135
7930-00-NIB-0136
7930-00-NIB-0137
7930-00-NIB-0138
7930-01-380-6404
7930-01-418-1102
7930-01-418-1104
7930-01-436-8012

Cap, Cold Weather

8415-01-099-7843
8415-01-099-7844
8415-01-099-7845
8415-01-099-7846
8415-01-099-7847
8415-01-099-7848

(Remaining 50% of the Government Requirement)

Bag, Tote, Mesh

M.R. 512

Thermometer, Digital, Poultry/Steak & Probe, Analog

M.R. 811
M.R. 812
M.R. 813
M.R. 815

Brush, Pastry

M.R. 824

Mop, Anglematic, Deluxe, Refill

M.R. 1039

Cob Web Duster

M.R. 1044

Mop, Flat w/Scrubber Refill

M.R. 1048

Christmas Towel

M.R. 1050

Services

Family Housing Maintenance

Naval Base
Ventura County, California

Grounds Maintenance

Naval & Marine Corps Reserve Center
Encino, California

Janitorial/Custodial

At the following Federal Buildings in Baltimore, Maryland:

Middle River Depot, 2800 Eastern Blvd
Fallon Federal Building, 31 Hopkins Plaza
Fallon Federal Child Development Center,
200 W Lombard Street
U.S. Customs House, 40 S. Gay Street
Appraisers Stores Building, 103 S. Gay Street

Mailing Services

U.S. Army Engineer District, Detroit,
Michigan

Switchboard Operation

At the Following:

Air Mobility Command Locations
Andrews Air Force Base, Maryland
Charleston Air Force Base, South Carolina
Dover Air Force Base, Delaware
Grand Forks Air Force Base, North Dakota
McChord Air Force Base, Washington
McConnell Air Force Base, Kansas
McGuire Air Force Base, New Jersey
Pope Air Force Base, North Carolina
Scott Air Force Base, Illinois
Travis Air Force Base, California
Fairchild Air Force Base, Washington

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01-25043 Filed 10-4-01; 8:45 am]

BILLING CODE 6353-01-P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: October 10 & 11, 2001; 9:30 a.m.-5 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review

and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION:

Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401-3736.

Dated: October 3, 2001.

Carol Booker,

Legal Counsel.

[FR Doc. 01-25225 Filed 10-3-01; 12:39 pm]

BILLING CODE 8230-01-M

DEPARTMENT OF COMMERCE

[I.D. 100201A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coastal Zone Management Program Administration.

Form Number(s): None.

OMB Approval Number: 0648-0119.

Type of Request: Regular submission.

Burden Hours: 6,598.

Number of Respondents: 34.

Average Hours Per Response: 10 hours for a Section 305 semi-annual performance report, 800 hours for a Section 305 program management document, 27 hours for semi-annual performance reports for Sections 306/306A/309/310/6217, 6 hours for an annual report, 8 hours for a program amendment or routine program change, 5 hours for Section 306A documentation, 150 hours for a Section

6217 nonpoint pollution control program, 240 hours for a new Section 6217 nonpoint pollution control program, 5 hours for a semi-annual performance report for Section 310 special appropriations, and 240 hours for a Section 309 assessment and strategy document

Needs and Uses: Coastal zone management grants provide funds to states and territories to implement federally-approved coastal zone management plans, to revise assessment documents and multi-year strategies, to submit requests to approve amendments or program changes, and to submit Section 306A documentation on their approved coastal zone management plans. Funds are also provided to states to develop their coastal management documents. The information submitted is used to determine if activities achieve national coastal management and enhancement objectives and if states are adhering to their approved plans.

Affected Public: State, local, or tribal Government.

Frequency: On occasion, semi-annual, annual, and every five years.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@dco.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 27, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01-25034 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-08-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-838]

Final Results of Expedited Sunset Review: Clad Steel Plate From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Clad Steel Plate from Japan.

SUMMARY: On June 1, 2001, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on clad steel plate from Japan (66 FR 29771) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry, and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: October 5, 2001.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5050 or (202) 482-3217 respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review was conducted pursuant to section 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and in 19 CFR part 351 (2000) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On June 1, 2001, the Department initiated a sunset review of the antidumping duty order on clad steel plate from Japan (66 FR 29771), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of one domestic interested party, Bethlehem Lukens Plate ("Lukens"), formerly Lukens Steel Company, within the

applicable deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Lukens claimed interested party status under section 771(9)(C) of the Act, as a producer of a domestic like product in the United States. On July 2, 2001, we received a complete substantive response from Lukens, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). We did not receive a substantive response from respondent interested parties in this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(iii)(C), the Department determined to conduct an expedited sunset, 120-day, review of this antidumping duty order.

Scope of Review

The scope of this review is all clad steel plate of a width of 600 millimeters ("mm") or more and a composite thickness of 4.5 mm or more. Clad steel plate is a rectangular finished steel mill product consisting of a layer of cladding material (usually stainless steel or nickel) which is metallurgically bonded to a base or backing of ferrous metal (usually carbon or low alloy steel) where the latter predominates by weight.¹

Clad steel plate within the scope of this review is classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") 7210.90.10.00. Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Analysis of Comments Received

All issues raised by parties to this sunset review are addressed in the Issues and Decision Memorandum

¹ Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. This limited diffusion is characteristic of clad products and differentiates them from products metalized in other manners (i.e., by normal electroplating). The various cladding processes include pouring molten cladding metal onto the basic metal followed by rolling; simple hot-rolling of the cladding metal to ensure efficient welding to the basic metal; any other method of deposition of superimposing of the cladding metal followed by any mechanical or thermal process to ensure welding (i.e., electrocladding), in which the cladding metal (nickel, Chromium, etc.) is applied to the basic metal by electroplating, molecular interpenetration of the surfaces in contact then being obtained by heat treatment at the appropriate temperature with subsequent cold rolling. See Harmonized Commodity Description and Coding System Explanatory Notes, Chapter 72, General Note (IV)(C)(2)(e). Stainless clad steel plate is manufactured to American Society for Testing and Materials ("ASTM") specifications A263 (400 series stainless types) and A264 (300 series stainless types). Nickel and nickel-base alloy clad steel plate is manufactured to ASTM specification A265. These specifications are illustrative but not necessarily all-inclusive.

("Decision Memorandum") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 1, 2001, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "October 2001." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on clad steel plate from Japan would likely head to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
The Japan Steel Company	118.53
All Others	118.53

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 1, 2001.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01-25101 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-605]

Frozen Concentrated Orange Juice from Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 4, 2001, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil (66 FR 29330). This review covers four manufacturers/exporters of the subject merchandise to the United States. This review covers the period May 1, 1999, through April 30, 2000.

Based on our analysis of the comments received, we have not made changes in the margin calculations. Therefore, the final results do not differ from the preliminary results. We have determined to rescind the review with respect to Branco Peres Citrus S.A., CTM Citrus S.A., and Sucorrico S.A. because they had no shipments of subject merchandise to the United States during the period of review. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: October 5, 2001.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0656 or (202) 482-3874, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations are to the Department of Commerce's (the Department's) regulations codified at 19 CFR part 351 (2000).

Background

This review covers four manufacturers/exporters (*i.e.*, Branco Peres Citrus S.A. (Branco Peres); Citrovita Agro Industrial Ltda. (Citrovita) and its affiliated parties (Cambuhy MC Industrial Ltda. (Cambuhy) and Cambuhy Citrus Comercial e Exportadora (Cambuhy Exportadora)); CTM Citrus S.A. (CTM); and Sucorrico S.A. (Sucorrico).

On June 4, 2001, the Department published in the *Federal Register* the preliminary results of administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Frozen Concentrated Orange Juice from Brazil; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 29330 (June 4, 2001) (*Preliminary Results*).

CTM and Sucorrico claimed that they did not have shipments of subject merchandise to the United States. Because we were able to confirm this with the Customs Service, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding our review for CTM and Sucorrico. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

Regarding Branco Peres, we were informed by the Customs Service that there was an entry of subject merchandise produced by Branco Peres during the period of review (POR) which was withdrawn from a bonded warehouse. We asked Branco Peres to explain the circumstances surrounding this entry. Branco Peres responded that it had reported the sale associated with the entry in question in the prior 1997-1998 administrative review of this proceeding. We have confirmed that we reviewed the sale associated with this entry in the context of the 1997-1998 administrative review completed August 11, 1999, and we have, therefore, determined that Branco Peres did not have any reviewable entries during this POR. Accordingly, we are rescinding our review of Branco Peres and intend to order liquidation of the entry in question at the rate in effect at the time of entry, in accordance with our practice. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

We invited parties to comment on our preliminary results of review. At the request of Citrovita, a respondent in this review, we held a public hearing on August 30, 2001. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The merchandise covered by this order is frozen concentrated orange juice from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). The HTSUS item number is provided for convenience and for customs purposes. The written description of the scope of this proceeding is dispositive.

Period of Review

The period of review is May 1, 1999, through April 30, 2000.

Partial Rescission of Review

As noted above, Branco Peres, CTM, and Sucorrico informed the Department that they had no shipments of subject merchandise to the United States during the POR. We have confirmed this with the Customs Service and with information submitted by Branco Peres from a previous segment of this proceeding. See the Memorandum from Jason M. Hoody to the File, entitled "U.S. Sales of Branco Peres in the 1997-1998 Antidumping Duty Administrative Review on Frozen Concentrated Orange Juice from Brazil," dated May 29, 2001. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review with respect to Branco Peres, CTM, and Sucorrico. (See e.g., *Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 35190, 35191 (June 29, 1998); and *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (Oct. 14, 1997).)

Affiliated Producers

During the previous administrative review, a sister company to Citrovita's parent company purchased another Brazilian producer of FCOJ and that producer's affiliated trading company (i.e., Cambuhy and Cambuhy Exportadora, respectively). In that segment of the proceeding, we determined that it was appropriate to treat Citrovita and these affiliated parties as a single entity using the criteria outlined in 19 CFR 351.401(f). See *Notice of Final Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice from Brazil*, 65 FR 60406, 60407 (Oct. 11, 2000) (FCOJ 1998-1999 Final Results). Because neither Citrovita nor Cambuhy has provided any new evidence showing that this finding no longer holds true, we have continued to

treat Citrovita and Cambuhy as a single entity and to calculate a single margin for them.¹ (See e.g., *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 17998, 17999 (April 13, 1999) (unchanged by the final results).) Regarding Cambuhy Exportadora, however, Citrovita provided information demonstrating that this company did not function as a producer of FCOJ during the POR. Accordingly, we have not collapsed Cambuhy Exportadora with Citrovita and Cambuhy for purposes of the final results.

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether Citrovita made home market sales of the foreign like product during the POR at prices below its cost of production (COP) within the meaning of section 773(b)(1) of the Act. We calculated the COP for these final results, and performed the cost test, following the same methodology as in the *Preliminary Results*.

Based on this analysis, we found that 100 percent of Citrovita's home market sales were made at prices less than the COP, and we disregarded them. For further discussion, see the *Preliminary Results*, 66 FR at 29932.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 2, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov>. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made no changes to

¹ Hereinafter, these companies will be referred to collectively as "Citrovita," unless otherwise noted.

the margin calculations. For further discussion, see the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentage exists for the period May 1, 1999, through April 30, 2000:

Manufacturer/exporter	Percent margin
Citrovita Agro Industrial Ltda./ Cambuhy MC Industrial Ltda	15.98

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Accordingly, we have calculated importer-specific duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. The assessment rate will be assessed uniformly on all entries of that particular importer made during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of FCOJ from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for previously 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, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 1.96 percent, the "all others" rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's

presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely 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.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 1, 2001.

Joseph A. Spetrini,
Acting Assistant Secretary for Import
Administration.

Appendix—Issues in Decision Memo

Comments

1. Exchange Rates
 2. Financing Expenses
 3. Profit Used for Constructed Value
- [FR Doc. 01-25099 Filed 10-4-01; 8:45 am]
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-837]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that greenhouse tomatoes from Canada are being, or are likely to be, sold in the United States at less-than-fair-value prices as provided in section 733 of the Tariff Act of 1930, as amended. The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: October 5, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Minoo Hatten, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202)

482-4794 or (202) 482-1690, 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. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to 19 CFR part 351 (April 2000).

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigation: Greenhouse Tomatoes From Canada*, 66 FR 20630 (April 24, 2001) (*Initiation Notice*)), the following events have occurred:

On May 14, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of greenhouse tomatoes from Canada. See ITC Investigation No. 731-TA-925 (Publication No. 3224).

Since it was not practicable to examine all known producers/exporters of subject merchandise, in accordance with section 777A(c)(2) of the Act and 19 CFR 351.204(c)(2), on May 15, 2001, we selected the five largest producers/exporters of greenhouse tomatoes from Canada as the mandatory respondents in this investigation. For further discussion, see the "Selection of Respondents" memorandum dated May 15, 2001, from Laurie Parkhill, Director, Office 3, to Richard W. Moreland, Deputy Assistant Secretary, Group I.

On May 16, 2001, we received a request from the Canadian Embassy on behalf of Westmoreland Sales, Golden Jem Produce Inc., and MCN Acres Ltd. to treat these companies as voluntary respondents in this investigation. On May 24, 2001, these potential voluntary respondents were provided with a copy of the questionnaire and specific written guidance on the Department's criteria for including a voluntary respondent in the investigation. We have not received a response to our questionnaire from any voluntary respondents.

On May 24, 2001, we issued the antidumping questionnaire to mandatory respondents BC Hot House Foods, Inc., Red Zoo Marketing (a.k.a. Produce Distributors, Inc.), Veg Gro Sales, Inc. (a.k.a. K & M Produce Distributors, Inc.), J-D Marketing, Inc.,

and Mastronardi Produce Ltd. In the cover letter of the questionnaire, we informed the mandatory respondents that we had initiated a cost-of-production (COP) inquiry in this case. These respondents did not produce the subject merchandise. Therefore, consistent with our policy regarding COP investigations, it became necessary to select producers which supplied the five respondents in order to gather COP information for this investigation. We requested comments regarding the selection of the COP respondents and on May 31, 2001, and June 21, 2001, we received comments from interested parties regarding the selection COP respondents. On June 29, 2001, the Department identified the COP respondents. See the "Identification of Cost-of-Production Respondents" memorandum dated June 29, 2001, from Laurie Parkhill, Director, Office 3, to Richard W. Moreland, Deputy Assistant Secretary, Group I. After identifying the appropriate companies for cost reporting and issuing questionnaires to these companies, we discovered that two of them were only resellers of greenhouse tomatoes and not growers. Therefore, we requested COP data from the growers which supplied these resellers. See the July 13 and July 19, 2001, letters from Laurie Parkhill, Director, Office 3, to counsel for Veg Gro Sales, Inc., and J-D Marketing, Inc., respectively.

During June, July, August, and September of 2001, the five mandatory respondents submitted their responses to the Department's original and supplemental questionnaires.

On August 10, 2001, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on August 15, 2001, and postponed the preliminary determination until no later than September 24, 2001 (see *Antidumping Duty Investigation Covering Greenhouse Tomatoes from Canada: Notice of Postponement of Preliminary Determination*, 66 FR 43838, August 21, 2001). On September 27, 2001, the Department postponed the due date for the preliminary determination until no later than October 1, 2001. See *Antidumping Duty Investigation On Greenhouse Tomatoes from Canada: Notice of Postponement of Preliminary Determination*, 66 FR 49344, September 27, 2001.

On several occasions the petitioners submitted comments arguing that the cost respondents for BC Hot House Foods, Inc., are unrepresentative of the other growers that supplied the

respondent with greenhouse tomatoes during the period of investigation (POI). See, e.g., the petitioners' July 11, August 3, and September 7, 2001, submissions. The petitioners requested that we use the weighted-average yield figure for all of the growers that supplied BC Hot House Foods, Inc., during the POI to adjust the COP data submitted by the cost respondents. For this preliminary determination, we have not made any such adjustment to the COP data. For further discussion, see the "Representativeness of Cost Data Submitted for BC Hot House Foods, Inc." memorandum dated October 1, 2001, from Mark Ross, Acting Program Manager, to Laurie Parkhill, Director, Office 3.

Period of Investigation

The POI is January 1, 2000, through December 31, 2000.

Scope of Investigation

The merchandise subject to this investigation consists of all fresh or chilled tomatoes grown in greenhouses in Canada, e.g., common round tomatoes, cherry tomatoes, plum or pear tomatoes, and cluster or "on-the-vine" tomatoes. Specifically excluded from the scope of this investigation are all field-grown tomatoes.

The merchandise subject to this investigation may enter under item numbers 0702.00.2000, 0702.00.2010, 0702.00.2030, 0702.00.2035, 0702.00.2060, 0702.00.2065, 0702.00.2090, 0702.00.2095, 0702.00.4000, 0702.00.4030, 0702.00.4060, 0702.00.4090, 0702.00.6000, 0702.00.6010, 0702.00.6030, 0702.00.6035, 0702.00.6060, 0702.00.6065, 0702.00.6090, and 0702.00.6095 of the Harmonized Tariff Schedule of the United States (HTSUS). These subheadings may also cover products that are outside the scope of this investigation, i.e., field-grown tomatoes. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (66 FR 20630). On May 14, 2001, BC Vegetable Greenhouse I, L.P. (BCVG), filed comments requesting that the scope be limited to include only hydroponic tomatoes and expressly exclude "heirloom" and "organic" tomatoes grown in greenhouses. On May 21, 2001, the petitioners filed comments

opposing BCGV's request to limit the scope. After considering the respondent's request and the petitioners' objections, we determined that the scope of this investigation should remain as published in the *Initiation Notice*. Our analysis of this scope issue is detailed in the memorandum from Laurie Parkhill, Director, Office 3, to Richard W. Moreland, Deputy Assistant Secretary, Group I, dated July 30, 2001, entitled "Request to Limit Scope of Investigation."

Facts Available

Red Zoo Marketing sold subject merchandise to an affiliated U.S. importer, Colasanti Produce & Plants, Inc. (Colasanti). Colasanti reported that it was unable to report specific sales of the subject merchandise because it "does not keep data according to separate, individual products." See Colasanti's response dated July 25, 2001, at page C-1. Moreover, Colasanti stated that "there is no separate data for tomatoes, only for produce, which encompasses tomatoes and hundreds of other products." *Ibid.* As a result, Colasanti was unable to report sales in the manner we requested. Because Colasanti did not report its sales to its unaffiliated customers, the use of facts available in determining the margin for Colasanti's sales is warranted.

Based on Colasanti's representations of itself as a small grocery store and the fact that it does not keep records that would allow it to report its sales data in the manner we require, we preliminarily determine that Red Zoo Marketing and Colasanti responded to our questionnaire to the best of their ability. There is no evidence on the record to suggest that either Red Zoo Marketing or Colasanti did not cooperate to the best of its ability. Red Zoo Marketing and Colasanti did not report these sales because it was impossible for them to do so based on their records. We intend to verify this assertion.

Because we preliminarily determine that Red Zoo Marketing and Colasanti responded to the best of their ability, we have determined the margin for sales through Colasanti using non-adverse facts available. This facts-available rate is the weighted-average margin we have calculated for Red Zoo Marketing based on its sales to all other customers. Because this facts-available rate is based on Red Zoo Marketing's own record data, it is not necessary to corroborate this information. We have applied facts available by excluding Red Zoo Marketing's sales to Colasanti from Red Zoo Marketing's U.S. sales database.

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced by the respondents that are within the definition of the scope of the investigation and were sold in the home market during the POI fall within the definition of the foreign like product. On May 2, 2001, we solicited comments from interested parties regarding product-matching criteria and matching hierarchy. The interested parties submitted comments on this issue on May 14, 16, and 18, 2001, and September 18, 2001. As part of their comments on the product-matching criteria and matching hierarchy, certain mandatory respondents also commented that the Department should average prices across grades and sizes within a particular type when making product comparisons.¹

For this preliminary determination we have not averaged prices across grades and sizes within a particular type for product comparisons. Instead, for calculating average prices, we have relied on four criteria (i.e., type, color, size, and grade) to establish distinct "models" which we then used to match U.S. sales of subject merchandise to identical home-market sales of the foreign like product. Based on our overall analysis of the greenhouse-tomato industry, we determined that the type, color, size, and grade of tomatoes correspond to physical differences and associated commercial differences that are important for product-matching and obtaining a reasonable comparison of prices.

We have also determined that it is not appropriate to compare prices of products that do not have the same type, color, size, and grade because these are significant physical characteristics which will affect the price comparability of these products. We can not account for these differences by means of a traditional difference-in-merchandise adjustment. Specifically, the respondents in this investigation have reported that their methods of tracking costs and the nature of producing greenhouse tomatoes does not allow them to distinguish costs by grade, size, or color. See, e.g., page 5 of the September 18, 2001, comments from the Ontario respondents and page D-1 of the August 6, 2001, response of BC

¹ On September 27, 2001, the petitioners submitted information and argument in support of using monthly weighted-average prices and not annual-average prices for the margin calculations. This information was received too late for us to consider for this preliminary determination. We will review this information and evaluate the appropriateness of this methodology for the final determination.

Hot House Foods, Inc., to our COP questionnaire. In accordance with 19 CFR 351.411, we generally will make a reasonable allowance for differences in physical characteristics by considering differences in variable costs associated with the physical differences. Since the respondents have reported that they cannot report costs that distinguish between factors other than type, we have matched sales of subject merchandise to home-market sales of identical type, color, size, and grade, but not to home-market sales of similar merchandise.² This methodology is consistent with that taken in other antidumping proceedings which involved foreign like product with significant differences for which we could not account by means of a difference-in-merchandise adjustment. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Fresh Tomatoes from Mexico*, 61 FR 56608, 56610 (November 1, 1996), and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Fresh Atlantic Salmon from Chile*, 63 FR 2664, 2666 (January 16, 1998).

Fair Value Comparisons

To determine whether sales of greenhouse tomatoes to the United States were made at less-than-fair-value prices, we compared the export price or constructed export price (CEP) to the normal value. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average export prices and CEPs to normal values. Any company-specific changes to the export-price, CEP, and normal-value calculations are discussed in each company's individual preliminary determination analysis memorandum from analyst to file dated October 1, 2001, and described in the "Company-Specific Changes to Normal Value and U.S. Price" section of this notice.

Export Price

We calculated export price, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States or to an unaffiliated purchaser for exportation to the United States, based on the facts of the record. We calculated export price based on packed FOB or delivered prices to unaffiliated

purchasers in the United States. We identified the correct starting price by accounting for billing adjustments (e.g., the adjustments for damage, quality, or condition claims) and making deductions for early-payment discounts and rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, foreign inland freight, foreign brokerage and handling, foreign warehousing expenses, and U.S. inland freight expenses.

Constructed Export Price

We calculated the CEP, in accordance with section 772(b) of the Act, for sales made to the first unaffiliated purchaser that took place after importation into the United States. We based the CEP on the packed, delivered prices to unaffiliated purchasers in the United States. We identified the correct starting price by accounting for billing adjustments (e.g., the adjustments for damage, quality, or condition claims) and making deductions for early-payment discounts and rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight, foreign brokerage and handling, foreign warehousing expenses, and U.S. inland freight expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (commissions, credit expenses), inventory carrying costs, U.S. repacking expenses, and indirect selling expenses. Finally, where applicable we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

Normal Value

A. Home-Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (i.e., whether the aggregate volume of home-market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home-market sales of the foreign like product to its volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(B) of the Act. Since each respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of the volume of U.S. sales of the subject merchandise, we determined that the

home market was viable for all respondents.

B. Affiliated-Party Transactions and Arm's-Length Test

The Department's standard practice with respect to the use of home-market sales to affiliated parties for normal value is to determine whether such sales are at arm's-length prices. Therefore, in accordance with that practice, we performed an arm's-length test for the two mandatory respondents that reported home-market sales to affiliates (i.e., Red Zoo Marketing and J-D Marketing, Inc.).

We excluded from our analysis sales respondents made to affiliated customers in the home market which were not at arm's-length prices because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102(b). To test whether these sales were made at arm's-length prices, we compared the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, rebates, and packing expenses. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c).

C. Cost-of-Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of greenhouse tomatoes in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a countrywide sales-below-cost-investigation to determine whether sales were made at prices below their respective COP (see *Initiation Notice*, 66 FR 20630).

1. Calculation of the Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), including interest expenses, and home-market packing costs.³

2. Test of Home-Market Sales Prices

In determining whether to disregard home-market sales made at prices less

² We will examine this issue further at verification and make modifications as necessary for the final determination.

³ On September 14, 2001, BC Hot House Foods, Inc., submitted information on alleged startup costs incurred during the POI. We received this information too late to be considered for this preliminary determination. We will review this information and evaluate the appropriateness of such an adjustment for the final determination.

than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit the recovery of all costs within a reasonable period of time. Because greenhouse tomatoes are a highly perishable agricultural product, pursuant to the Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), at 832 and section 773(b)(2)(C)(ii) of the Act, to determine whether below-cost sales were made in substantial quantities within an extended period of time, we compared the weighted-average per-unit price of a given product sold in the home market during the POI to the weighted-average per-unit COP of that product over the POI. In accordance with section 773(b)(2)(B) of the Act, we have determined that the POI is an extended period of time. Where a respondent's weighted-average per-unit price of a given product was greater than or equal to the respective weighted-average COP, we did not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where a respondent's weighted-average per-unit price of a given product was less than the respective weighted-average COP, we found that below-cost sales were made within an extended period of time in substantial quantities within the meaning of section 773(b)(2)(C)(ii) of the Act.

Pursuant to section 773(b)(2)(D) of the Act, we examined whether individual transactions made at prices found to be below cost permitted the recovery of all costs within a reasonable period of time. Where the analysis described above resulted in a determination that the below-cost sales of these perishable products were made in "substantial quantities" over an "extended period of time," we also determined that individual below-cost sales were not at prices sufficient to recover costs within a reasonable period of time. Where sales of a given product were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit the recovery of all costs within a reasonable period of time, we identified individual below-cost transactions by comparing the individual transaction prices to the respective weighted-average COP.

3. Results of the COP Test

For all respondents we have disregarded individual below-cost

transactions and used the remaining above-cost sales as the basis for determining normal value, in accordance with section 773(b)(1) of the Act.

D. Calculation of Constructed Value

Section 773(a)(4) of the Act provides that, where normal value cannot be based on comparison-market sales, normal value may be based on constructed value. Accordingly, for all five respondents, when home-market sales of comparison products were not available, either because there were no sales of a comparable product or we disregarded all sales of the comparable product as a result of the COP test, we based normal value on constructed value.

In accordance with sections 773(e)(1) and (e)(2)(A) of the Act, we calculated constructed value based on the sum of the cost of materials and fabrication for the foreign like product plus amounts for selling expenses, G&A, including interest, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the "Calculation of the Cost of Production" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses, G&A, and profit on the amounts incurred and realized by the mandatory respondents and the cost respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

A. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate normal value based on sales in the comparison market at the same level of trade as the export-price or CEP transaction. Sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution),⁴ including

⁴ The marketing process in the United States and home markets begins with the producer and

selling functions, class of customer (or customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for the export-price and home-market sales (*i.e.*, normal value based on either home-market or third-country prices⁵), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314-1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same level of trade as the export price or CEP, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market. In comparing the export-price or CEP sales to sales of the foreign like product at a different level of trade in the comparison market, where available data make it practicable, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a normal-value level of trade is more remote from the factory than the CEP level of trade and we are unable to make a level-of-trade adjustment, we shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from each respondent regarding the marketing stages involved in making the reported home-market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. Detailed company-specific level-of-trade findings are discussed in detail in the company-specific preliminary determination analysis memoranda and described below.

With respect to Red Zoo Marketing, Veg Gro Sales, Inc., J-D Marketing, Inc., and Mastronardi, we found that each performed similar selling functions for

extends to the sale of the final user or consumer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative respondent to determine where in the chain of distribution the sale occurs.

⁵ Where normal value is based on constructed value, we determined the normal-value level of trade based on the level of trade of the sales from which we derive selling expenses, G&A, and profit for constructed value, where possible.

all of its home-market channels of distribution such that, in each case, we found one level of trade in the home market. In addition, each company performed similar selling functions for their channels of distribution such that in each case we found one level of trade in the United States. For all four respondents, we found that each company's single home-market level of trade is the same as its single U.S. level of trade. Therefore, it was not necessary to make a level-of-trade adjustment.

For BC Hot House Foods, Inc., based on differences in customer categories and selling activities among its home-market channels of distribution, we determined that the sales were made at two levels of trade. Similarly, we found two levels of trade for BC Hot House Foods, Inc.'s export-price and CEP sales to the U.S. market. Where possible, we matched export-price and CEP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. Where we matched export-price sales or CEP sales to home-market sales at a different level of trade, in accordance with section 773(a)(7)(A) of the Act, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. Based on an analysis of the price differences between the two home-market levels of trade, we found that there was a pattern of consistent price differences, and we calculated a level-of-trade adjustment for the differences.

F. Calculation of Normal Value Based On Home-Market Prices

We calculated normal value based on packed, ex-distribution warehouse or delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. To identify the correct starting price, we accounted for billing adjustments, where appropriate. We made deductions, where applicable, for early-payment discounts and other discounts and rebates. We also made adjustments for inland freight and warehousing expense, where appropriate, in accordance with section 773(a)(6)(B)(iii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for commissions, imputed credit expenses, and other direct selling expenses. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on home-market or U.S. sales where commissions were granted on sales in one market but not in the other. We also added U.S. packing costs and deducted

home-market packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act, respectively. Finally, where appropriate, we made an adjustment for differences in level of trade under section 773(a)(7)(A) of the Act and 19 CFR 351.412(b)-(e).

G. Calculation of Normal Value Based on Constructed Value

For comparisons of price to constructed value, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act. Where we compared constructed value to CEP, we made circumstances-of-sale adjustments by deducting HM direct selling expenses. Where we compared constructed value to EP, we made circumstances-of-sale adjustments by deducting HM direct selling expenses and adding U.S. direct selling expenses. Finally, we made an adjustment for differences in level of trade under section 773(a)(7)(A) of the Act and 19 CFR 351.412(b)(e).

Company-Specific Changes to Normal Value and U.S. Price

We relied on data submitted by the respondents except as discussed in our company-specific preliminary determination analysis memoranda. Any company-specific changes to the export-price, CEP, and normal-value calculations are described below.

We relied on COP data submitted by the cost respondents except as discussed in our company-specific preliminary calculation memoranda. We have calculated a simple-average cost in situations where a respondent reported more than one cost for the same product. See *Fresh Kiwifruit From New Zealand: Notice of Final Determination of Sales at Less Than Fair Value*, 56 FR 60092 (November 27, 1991), and *Live Cattle From Canada: Notice of Final Determination of Sales at Less Than Fair Value*, 64 FR 56738, 56751-52 (October 21, 1999).

For all the cost respondents, we revised the calculations of the financial-expense rate. In addition, for some cost respondents, we revised the G&A rate, variable-overhead calculation, and fixed-overhead calculation.

Red Zoo Marketing

We excluded Red Zoo Marketing's home-market zero-priced sample sales. We revised the calculation of the cost of manufacture to disallow the claimed energy-cost adjustment, the claimed amortization adjustments for a new trough system, and the claimed depreciation adjustment. In addition, we segregated the reported costs by type of tomato (e.g., cherry, roma). Finally,

we recalculated the ratios of the G&A expense and interest expense to reflect the revised cost of manufacturing.

BC Hot House Foods, Inc.

We reallocated the advertising costs that BC Hot House Foods, Inc., reported for its sales of subject merchandise and we calculated an amount for credit expenses on certain U.S. transactions for which the respondent had not received payment. We revised the calculation of G&A expenses to include head-office management fees. Additionally, in the absence of audited consolidated financial statements, we recalculated the interest-expense rates based on the financial statements of the selected cost respondents.

Veg Gro Sales, Inc.

We excluded from our analysis home-market and U.S. sales of greenhouse tomatoes that were reported as grown in countries other than Canada. In addition, we excluded all zero-priced U.S. sample transactions from our analysis.

We revised the calculation of the cost of manufacture to disallow certain claimed adjustments. With regard to both cost respondents for Veg Gro Sales, Inc., we revised the calculation of variable overhead costs to include all heating costs incurred during the POI. We also revised the calculation of fixed overhead to include all depreciation charges incurred during the POI. For one of Veg Gro Sales, Inc.'s cost respondents, we revised the fixed-overhead calculation to include the excluded costs for renting a cooler. We adjusted G&A expenses to include management fees and we revised the calculation of the financial-expense rate to include short-term interest income received from affiliates and all long-term interest expenses incurred by the company.

For the other Veg Gro Sales, Inc., cost respondent, we revised the G&A rate calculation to include shareholders' life-insurance premiums. We also revised this cost respondent's financial-expense rate to exclude imputed short-term interest income and include all long-term interest expense experienced by the company.

Because we did not receive information concerning the G&A and financial expenses experienced by the exporting company, Veg Gro Sales, Inc., we calculated a rate which reflects these G&A and financial expenses.

Mastronardi

We did not include home-market sales for which we had no cost information and removed all zero-priced

sample transactions from our analysis. We recalculated packing expenses and credit expenses for certain U.S. sales. We excluded sales of greenhouse tomatoes produced outside of Canada. We did not include U.S. sales transactions for which we had no cost information, which represented less than one percent of Mastronardi's U.S. sales, and removed all zero-priced sample transactions from our analysis.

We revised the calculation of variable overhead costs to include all heating costs incurred during the POI. We included the total cost of the plastic covers recorded as a general repair and maintenance expense in the normal books and records of the company in the G&A expense-rate calculation. We revised the denominator in the financial expense rate calculation to reflect the total cost of goods sold incurred by the consolidated entity.

J-D Marketing, Inc.

We assigned a customer relationship for J-D Marketing, Inc.'s home-market affiliate in order to perform the arm's-length test. We did not include home-market sales for which we had no cost information and removed all zero-priced sample transactions from our analysis.

We recalculated packing expenses and credit expenses for certain U.S. sales. We did not include U.S. sales for which we had no cost information, which represented less than one percent of J-D's marketing Inc.'s U.S. sales, and we removed all zero-priced sample transactions from our analysis of U.S. sales.

We revised the calculation of variable overhead costs to include all heating costs incurred during the POI. We revised the calculation of fixed overhead costs to include all depreciation charges incurred during the POI. We adjusted G&A expenses to include the total executive salaries and exclude an adjustment for reimbursements from expenses paid on behalf of owners. We also adjusted the company's interest-expense rate to include all interest expenses incurred by the company and to include total cost of goods sold in the denominator.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rate in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information upon

which we will rely in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise except for exports by J-D Marketing, Inc., that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/grower	Weighted-average margin percentage
BC Hot House Foods, Inc.	50.75
Red Zoo Marketing (a.k.a. Produce Distributors, Inc.)	23.17
Veg Gro Sales, Inc. (a.k.a. K & M Produce Distributors, Inc.)	2.45
J-D Marketing, Inc.	0.00
Mastronardi Produce Ltd.	5.54
All Others	32.36

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final antidumping determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than one week after the issuance of the Department's verification reports. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with

section 774 of the Act, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made, the hearing will be tentatively held three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C., 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: October 1, 2001.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01-25100 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-818; A-489-805]

Final Results of Expedited Sunset Reviews: Certain Pasta From Italy and Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: Certain pasta from Italy and Turkey.

SUMMARY: On June 1, 2001, the Department of Commerce ("the Department") initiated five-year ("sunset") reviews of the antidumping duty orders on certain pasta ("pasta") from Italy and Turkey (66 FR 29771) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to

participate and substantive comments filed on behalf of the domestic interested parties, and inadequate response and/or request for waivers from respondent interested parties, the Department conducted expedited (120-day) sunset reviews of these antidumping duty orders. As a result of these reviews, the Department finds that revocation of the antidumping orders on pasta from Italy and Turkey would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: October 5, 2001.

FOR FURTHER INFORMATION CONTACT:

Martha V. Douthit or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-5050 or (202) 482-3217, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and in 19 CFR part 351 (2000) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On June 1, 2001, the Department initiated sunset reviews of the antidumping duty orders on pasta from Italy and Turkey (66 FR 29771), pursuant to section 751(c) of the Act.¹ On June 15, 2001, the Department received Notices of Intent to Participate on behalf of New World Pasta, American Italian Pasta Company, Borden Foods Corporation, and Dakota Growers Pasta Company (collectively, "the domestic interested parties"), within the applicable deadline specified in section 351.218(d)(1)(i) of the Sunset

Regulations.² The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as producers of certain pasta in the United States. On July 2, 2001, the Department received complete substantive responses from the domestic interested parties within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i).³ We did not receive substantive responses from respondent interested parties in these proceedings.⁴ As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department conducted an expedited, 120-day, sunset review of these antidumping duty orders.

Scope of Reviews

Italy (A-475-818)

Imports covered by the antidumping duty order on pasta from Italy include shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded from this order are imports of organic pasta from Italy that

² See Letter of Domestic Party Notice of Intent to Participate—Sunset Review of the Antidumping Duty Order on Certain Pasta from Italy, June 15, 2001, and Domestic Party Notice of Intent to Participate—Sunset Review of the Antidumping Duty Order on Certain Pasta from Turkey, June 15, 2001.

³ See Substantive Response by the Domestic Industry, Sunset Review of the Antidumping Duty Order on Certain Pasta from Italy, July 2, 2001, and Substantive Response by the Domestic Industry, Sunset Review of the Antidumping Duty Order on Certain Pasta from Turkey, July 2, 2001.

⁴ On June 4, 2001, La Molisana Industrie Alimentari ("La Molisana") and Molisana U.S. entered an appearance in support of revocation of the antidumping duty order on Certain Pasta from Italy. On June 27, 2001, Rienzi & Sons, Inc. ("Rienzi"), and N. Puglisi & F. Industria Paste Alimentari S.p.A. ("Puglisi") entered an appearance in the proceeding on Certain Pasta from Italy. These companies did not submit substantive responses in this review.

On June 29, 2001 and July 2, 2001, the Department received waivers of participation in the Department's sunset review on pasta from Italy on behalf of Delverde, SpA ("Delverde"), Tamma Industri Alimentari di Capitanata Srl ("Tamma") and Prodotti Alimentari Meridionali S.r.L. ("PAM").

are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to the antidumping duty order on pasta from Italy is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings:

(1) On August 25, 1997, the Department issued a scope ruling, finding that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the order. See Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, on file in the Central Records Unit ("CRU") of the main Commerce Building, Room B-099.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the order. See letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, on file in the CRU.

(3) On October 23, 1997, the petitioners filed a request that the Department initiate an anti-circumvention investigation against Barilla, an Italian producer and exporter of pasta. On October 5, 1998, the Department issued a final determination that, pursuant to section 781(a) of the Act, Barilla was circumventing the antidumping duty order by exporting bulk pasta from Italy which it subsequently repackaged in the United States into packages of five pounds or less for sale in the United States. See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 63 FR 54672 (October 13, 1998) (Barilla Circumvention Inquiry).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package

¹ See Notice of Initiation of Five-Year (Sunset) Reviews, 66 FR 29771 (June 1, 2001).

weighing over five pounds as a result of allowable industry tolerances may be within the scope of the order. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing up to (and including) five pounds four ounces, and so labeled, is within the scope of the order. See Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999 on file in the CRU.

On December 13, 2000 the Department revoked the antidumping duty order with respect to De Cecco. See 65 FR 77852 (December 13, 2000).

Turkey (A-489-805)

Imports covered by the antidumping duty order on pasta from Turkey include shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions. Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Ruling

On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing up to (and including) five pounds four ounces, and so labeled, is within the scope of the order. See Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, on file in the CRU.

Analysis of Comments Received

All issues raised by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Jeffrey

A. May, Director, Office of Policy, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 1, 2001, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the order revoked. Parties may find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099, of the main Commerce building. In addition, a complete version of the Decision Memorandum may be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "October 2001." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on pasta from Italy and Turkey would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producer/exporter	Weighted-average margin (percent)
Arrighi/Italpasta	19.09
De Cecco	Revoked
De Matteis	0.00
Delverde/Tamma	1.68
La Molisana	14.73
Liguori	11.58
Pagani	17.47
All Others	11.26

The antidumping order with respect to De Cecco, was revoked based on three years of sales in commercial quantities at not less than normal value. See 65 FR 77852 (December 13, 2000).

Manufacturer/producer/exporter	Amended margin (%) (61 FR 38545)	Revised deposit rate (61 FR 38545)
Filiz	63.29	63.29
Maktas	60.87	48.26*

Manufacturer/producer/exporter	Amended margin (%) (61 FR 38545)	Revised deposit rate (61 FR 38545)
All Others	60.87	51.49*

* Article VI of the General Agreement on Tariffs and Trade (1947) prohibits assessing dumping duties on the portion of the margin attributable on an export subsidy. In this case, the product in the investigation was subject to a countervailing duty order (see Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey, 61 FR 30288 (June 14, 1996)). Therefore, for all entries of pasta from Turkey, entered or withdrawn from warehouse for consumption made on or after the date on which the order in the companion countervailing duty order investigation was published in the FEDERAL REGISTER, Customs is instructed to deduct the portion of the margin attributable to the export subsidy from the countervailing duty investigation. Therefore, the cash deposit rate for Maktas is 48.26, and 51.49 percent for all other Turkish manufacturers/producers/exporters. The deposit rate for Filiz is based on total adverse facts available taken from the petition. Because the margin for Filiz was not a calculated margin, the margin remains unchanged.

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This sunset review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 1, 2001.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01-25102 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-813]

Stainless Steel Butt-Weld Pipe Fittings from Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Duty Review.

SUMMARY: The Department of Commerce has received a request for a new shipper review of the antidumping duty order on certain welded stainless steel butt-

weld pipe fittings from Korea issued on February 23, 1993 (58 FR 11029). In accordance with our regulations, we are initiating a new shipper review covering TK Corporation.

EFFECTIVE DATE: October 5, 2001.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Michael Heaney, or Robert James, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, telephone: (202) 482-2924, (202) 482-4475, or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 351 (2001).

Background

The Department received a timely request, in accordance with section 751(a)(2)(B) of the Tariff Act and 19 CFR 351.214(d) of the Department's regulations, for a new shipper review of the antidumping duty order on stainless steel butt-weld pipe fittings from Korea. See Antidumping Duty Order: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from Korea, 58 FR 11029 (February 23, 1993). See also the letter to the Secretary of Commerce from the law firm of Miller & Chevalier, August 31, 2001, requesting a new shipper review on behalf of TK Corporation, an exporter/producer of stainless steel butt-weld pipe fittings.

Initiation of Review

Pursuant to the Department's regulations at 19 CFR 351.214(b), TK Corporation certified in its August 31, 2001 submission that it did not export subject merchandise to the United States during the period of the investigation (POI) (December 1, 1991 through May 30, 1992), and that it was not affiliated with any exporter or producer of the subject merchandise to the United States during the POI. TK Corporation also submitted documentation establishing the date on which it first shipped the subject merchandise for export to the United States, the volume shipped, and the date

of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B)(ii) of the Tariff Act and section 351.214(d)(1) of the Department's regulations, we are initiating a new shipper review of the antidumping duty order on stainless steel butt-weld pipe fittings from Korea. This review covers the period February 1, 2001 through July 31, 2001. We intend to issue the final results of the review no later than 180 days from the date of publication of this notice.

We will instruct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from TK Corporation and allow, at the option of the importer, the posting, until completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by TK Corporation in accordance with 19 CFR 351.214(e).

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305(b).

This initiation and this notice are in accordance with section 751(a) of the Tariff Act and section 351.214 of the Department's regulations.

Dated: September 28, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01-25097 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period April 1, 2001 through June 30, 2001. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 5, 2001.

FOR FURTHER INFORMATION CONTACT:

Tipten Troidl, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period April 1, 2001 through June 30, 2001.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: October 1, 2001.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

Appendix

Subsidy Programs on Cheese Subject to an In-Quota Rate of Duty

Country	Program(s)	Gross ¹ Subsidy (\$/lb)	Net ² Subsidy (\$/lb)
Austria	European Union Restitution Payments	\$0.09	\$0.09
Belgium	EU Restitution Payments	0.04	0.04
Canada	Export Assistance on Certain Types of Cheese	0.23	0.23
Denmark	EU Restitution Payments	0.03	0.03
Finland	EU Restitution Payments	0.15	0.15
France	EU Restitution Payments	0.09	0.09
Germany	EU Restitution Payments	0.06	0.06
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.04	0.04
Italy	EU Restitution Payments	0.04	0.04
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.04	0.04
Norway	Indirect (Milk) Subsidy Consumer Subsidy	0.12 0.27	0.12 0.12
Total		0.39	0.39
Portugal	EU Restitution Payments	0.04	0.04
Spain	EU Restitution Payments	0.03	0.03
Switzerland	Deficiency Payments	0.07	0.07
U.K.	EU Restitution Payments	0.03	0.03

¹ Defined in 19 U.S.C. 1677(5).

² Defined in 19 U.S.C. 1677(6).

[FR Doc. 01-25098 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-489-806]

Final Results of Expedited Sunset Review: Countervailing Duty Order on Certain Pasta From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Countervailing duty order on certain pasta from Turkey.

SUMMARY: On June 1, 2001, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on certain pasta ("pasta") from Turkey (66 FR 29771) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties, and inadequate response (in this case, no response) from respondent interested parties, the Department is conducting an expedited (120-day) sunset review of this countervailing duty order. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy.

The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of this notice.

EFFECTIVE DATE: October 5, 2001.

FOR FURTHER INFORMATION CONTACT:

Martha V. Douthit or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-5050 or (202) 482-3217, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreement Act ("URAA"). The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and in 19 CFR Part 351 (2000) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope of Review

The scope of this review covers shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. Pasta covered by this review is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the order and this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The subject merchandise is currently classifiable under subheading 1902.19.20 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Scope Ruling

The Department has issued the following scope ruling:

On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the countervailing duty order.

On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the countervailing duty order. (See May 24, 1999, memorandum from John Brinkman to Richard Moreland, which is on file in the Central Records Unit ("CRU") in Room B-099 of the main Commerce building.)

Background

On June 1, 2001, the Department initiated a sunset review of the countervailing duty orders on pasta from Turkey; pursuant to section 751(c) of the Act (66 FR 29771). The Department received a notice of intent to participate on behalf of New World Pasta, American Italian Pasta Company, Borden Foods Corporation, and Dakota Growers Pasta Company (collectively, "the domestic interested parties"), on June 15, 2001, within the applicable deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Pursuant to section 771(9)(C) of the Act, the domestic interested parties claimed interested party status as producers of certain pasta. In addition, the domestic interested parties assert that most of the domestic interested parties participated in the original investigation and the scope clarification proceeding.¹ On June 29, 2001, we received a request for extension of time to file substantive responses and rebuttal comments from the domestic interested parties.² The Department received a complete substantive response from the domestic interested parties on July 16, 2001. The Department did not receive substantive responses from any respondent interested party in this proceeding.³ As a result, pursuant to 19 CFR

351.218(e)(2)(ii)(C), the Department determined to conduct an expedited, 120-day, sunset review of the countervailing duty order on pasta from Turkey.⁴

Analysis of Comments Received

All issues raised by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 1, 2001, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of countervailing subsidies and the net subsidy likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "October 2001." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the countervailing duty order on pasta from Turkey would likely lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

TURKEY	
Manufacturer/producer/exporters	Net Countervailable subsidy
Filiz	3.87
Maktas	13.12
Oba	15.82
All Other (manufacturers/producers/exporters)	9.70

Nature of the Subsidies

Five of the programs included in the calculations of the net countervailable subsidy likely to prevail if the order were revoked fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. They are: Pre-Shipment Export Loans, Pasta

⁴ See July 23, 2001, Letter from Jeffrey A. May, Director, Office of Policy, to Lynn Featherstone, Director, Office of Investigations, International Trade Commission, regarding Pasta from Turkey: Expedited Sunset Reviews of Antidumping and Countervailing Duty Orders.

Export Grants, Free Wheat Program, Payment for Exports on Turkish Ships/State Aid for Exports, and Tax Exemption Based on Export Earnings.

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 1, 2001.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01-25103 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 01-00004.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to International Trading Group, LLC ("ITG"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT:

Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2000).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certification in the *Federal Register*. Under section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice,

¹ See Substantive Response by the Domestic Industry, Sunset Review of the Countervailing Duty Order on Certain Pasta from Turkey, July 2, 2001, at 4.

² On June 29, 2001, the Department received a letter on behalf of the domestic interested parties regarding request for additional time to file substantive and rebuttal comments in this sunset review. On June 29, 2001, the Department granted the extension to the domestic parties and to all participants. Pursuant to 19 CFR 351.302(b), the deadline for all parties filing substantive responses was extended to July 16, 2001.

Pursuant to 19 CFR 351.218(d)(4), the time for filing rebuttal comments was therefore extended to July 23, 2001 for all parties. In this review, no rebuttal briefs were filed.

³ On June 20, 2001, the Department received a letter from the Government of Turkey ("GOT") regarding its interest in participating in the sunset proceeding regarding the countervailing duty order on certain pasta from Turkey. However, the Department did not receive a substantive response from the GOT.

bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products*
All products.
2. *Services*
All services.

3. *Technology Rights*

All intellectual property rights associated with Products or Services, including, but not limited to: Patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

4. *Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights)*

Export Trade Facilitation Services, including, but not limited to: professional services in the areas of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; bonding; warehousing; export trade promotion; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

ITG may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotion and marketing activities and collect and distribute information on trade opportunities in the Export Market;
3. Enter into exclusive and/or non-exclusive agreements with distributors, foreign buyers, and/or sales representatives in Export Markets;

4. Enter into exclusive or non-exclusive sales agreements with Suppliers, Export Intermediaries, or other persons for the sale of Products and Services in Export Markets;
5. Enter into exclusive or non-exclusive agreements with Suppliers, Export Intermediaries, or other persons for licensing Technology Rights in Export Markets;
6. Allocate the sales, export orders and/or divide Export Markets among Suppliers, Export Intermediaries, or other persons for the sale of Products and Services;
7. Allocate the licensing of Technology Rights in Export Markets among Suppliers, Export Intermediaries, or other persons;
8. Establish the price of Products and Services for sale in Export Markets;
9. Establish the fee for licensing of Technology Rights in Export Markets; and
10. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, ITG will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.
2. ITG will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.
 2. "Supplier" means a person who produces, provides, or sells a Product and/or Service.
- A copy of this certificate will be kept in the International Trade

Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: October 1, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading,
Company Affairs.

[FR Doc. 01-25033 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D 100201B]

Proposed Information Collection; Comment Request; Gear-Marking Requirement for Atlantic Large Whale Take Reduction Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA).
ACTION: Notice.

SUMMARY: The Department of Commerce, 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 (44 U.S.C. 3506(c)(2)(A)).
DATES: Written comments must be submitted on or before December 4, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patricia Lawson, F/PR2, Room 13754, 1315 East-West Highway, Silver Spring MD 20910-3282 (phone 301-713-2322, ext. 129).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this proposed collection of information is to enable NOAA to reduce entanglements of large whales, especially right whales, in U.S. commercial fishing gear. Persons setting lobster trap/pot or gillnet gear in some areas of the Atlantic Ocean would be required to paint or otherwise mark their gear with two color codes, one

color designating the type of gear, the other designating the area where the gear is set depending on area. These marking requirements would apply in right whale critical habitats and in two other areas where right whales are seen on a regular basis. These areas are the southeast U.S. observer area and the Stellwagen Bank/Jeffreys Ledge restricted area.

The goals of this collection of information are to obtain more information on where large whales are being entangled and on the type gear responsible for the entanglement. This information will allow NMFS to focus further risk reduction measures on problem areas rather than instituting broader measures that affect the overall industry.

II. Method of Collection

This is a marking requirement and no information is submitted to NOAA.

III. Data

OMB Number: 0648-0364.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 1,260.

Estimated Time Per Response: .6 minutes.

Estimated Total Annual Burden Hours: 4,206.

Estimated Total Annual Cost to Public: \$25,238.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 27, 2001

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01-25039 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100101E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Reef Fish Stock Assessment Panel (RFSAP).

DATES: This meeting will begin at 9 a.m. on Monday, October 22, 2001, and conclude by 12 noon on Friday, October 26, 2001.

ADDRESSES: The meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Fishery Biologist; telephone: 813-228-2815.

SUPPLEMENTARY INFORMATION: The Council will convene a meeting of the RFSAP to review stock assessments on the status of the gag, vermilion snapper, and gray triggerfish stocks in the Gulf of Mexico. This is a rescheduling of a meeting originally set for September 24-28, 2001, but cancelled due to a lack of a quorum. The stock assessments were prepared by NMFS and will be presented to the RFSAP. In the Report to Congress on the Status of Fisheries in the United States prepared by NMFS in January 2001, gag and vermilion snapper were listed as undergoing overfishing and gag was listed as approaching an overfished condition. Gag is a component of the shallow-water grouper complex (which consists of red grouper, gag, yellowfin grouper, black grouper, scamp, yellowmouth grouper, rock hind, and red hind). The status of gray triggerfish was listed as unknown.

The RFSAP is composed of biologists who are trained in the specialized field of population dynamics. They advise

the Council on the status of stocks and, when necessary, recommend a level of acceptable biological catch (ABC) needed to prevent overfishing or to effect a recovery of an overfished stock. They may also recommend catch restrictions needed to attain management goals.

Based on its review of the gag, vermilion snapper, and gray triggerfish stock assessments, the RFSAP may recommend a range of ABC for 2002, and may recommend management measures to achieve the ABC.

The conclusions of the RFSAP will be reviewed by the Council's Standing and Special Reef Fish Scientific and Statistical Committee (SSC), Socioeconomic Panel (SEP), and Reef Fish Advisory Panel (RFAP) at meetings to be held between November, 2001 and January, 2002. The Council may set year 2002 total allowable catches (TAC) as well as other management measures for the gag component of the shallow-water grouper complex and for vermilion snapper and gray triggerfish at its meeting in Brownsville, TX on January 21-24, 2002.

Although other non-emergency issues not on the agendas may come before the RFSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the RFSAP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 15, 2001.

Dated: October 2, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 01-25035 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100101C]

Endangered Species; Permits

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

ACTION: Issuance of permits #1325 and 1348.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of incidental take under the Endangered Species Act (ESA): NMFS has issued permit 1348 to Mr. Preston Pate, of the State of North Carolina—Department of Environment and Natural Resources (1348) and permit 1325 to Mr. Rich Carpenter, of the North Carolina Division of Marine Fisheries (1325).

ADDRESSES: The permits, applications and related documents are available for review in the indicated office, by appointment:

Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone: 301-713-1401, fax: 301-713-0376).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (phone: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are 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. Scientific research and/or enhancement permits are issued under Section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Species Covered in This Notice

The following species are covered in this notice:

Sea turtles

Threatened and endangered Green turtle (*Chelonia mydas*)
Endangered Hawksbill turtle (*Eretmochelys imbricata*)
Endangered Kemp's ridley turtle (*Lepidochelys kempii*)
Endangered Leatherback turtle (*Dermochelys coriacea*)
Threatened Loggerhead turtle (*Caretta caretta*)

Permits and Modified Permits Issued

Permit #1348

Notice was published on 08/15/2001 (66 FR 42845) that Mr. Preston Pate, of the State of North Carolina—Department of Environment and Natural Resources applied for an individual incidental take permit for the purpose of managing its large and small mesh (5 inches or greater stretched mesh) gillnet fishery in the Gillnet Restricted Area (GNRA), defined as the following areas in southeastern Pamlico Sound, North Carolina. Permit 1348 was issued on September 28, 2001, authorizing take of listed species. Permit 1348 expires December 16, 2001.

Permit #1325

Notice was published on (66 FR 32791) that Mr. Rich Carpenter, of the North Carolina Division of Marine Fisheries applied for an incidental take permit (1325). The North Carolina Division of Marine Fisheries (NCDMF) has requested an individual incidental take permit (ITP) to continue to manage the shrimp trawl fishery in a restricted area of North Carolina approximately 30 nautical miles (nm) long, from Rich Inlet (34°17.6' N. latitude) and Brown's Inlet (34°35.7' N latitude) to a distance of 1 nm seaward of the COLREGS line. NCDMF possessed an ITP for this activity covering actions from 1996-2000.

The high concentration of algae in this area in the warmer months of the year often clog the Turtle Excluder Devices (TEDs) required by Federal regulations and render the TEDs useless in releasing turtles. The applicant requests an ITP to be effective April 1 through November 30 of each year.

NCDMF must notify and reinstate consultation with NMFS if takes directly attributable to TED exempt tows result in the an observed incidental capture of up to 10 loggerhead turtles and 2 turtles in any combination of green, Kemp's ridley, hawksbill or leatherback. Of these NMFS anticipates that 2 turtles in any combination of loggerhead, green, Kemp's ridley, hawksbill or leatherback may be killed dead. Permit 1325 was issued on August

17, 2001, authorizing take of listed species. Permit 1325 expires December 31, 2006.

Dated: October 1, 2001.

Barry Thom,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01-25037 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Announcement of Members for the Performance Review Board

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Announcement of Members for the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Tony Calza, Department of Commerce, NTIA, Room 4888, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: This notice announces the appointment by the Assistant Secretary for Communications and Information, Nancy J. Victory, of the members of the Performance Review Board for the National Telecommunications and Information Administration. The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, pay rate level increases and Presidential Rank Awards for members of Senior Executive Service.

The following individuals are eligible to serve on the Performance Review Board in accordance with the Senior Executive Service Performance Appraisal System of the National Telecommunications and Information Administration.

Bernadette McGuire-Rivera
Kelly K. Levy
Neal B. Seitz
Frederick R. Wentland
Ronald P. Hack

Dated: October 1, 2001.

Vicki G. Brooks,

Executive Secretary, National Telecommunications and Information Administration Performance Review Board.

[FR Doc. 01-25032 Filed 10-04-01; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 1, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.gov>. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 334 is being increased for the recrediting of special shift, reducing the limit for Category 634 to account for the recrediting of special shift being applied to Category 334.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69910, published on November 21, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 1, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-

made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 9, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
334	242,518 dozen.
634	744,610 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 01-25090 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-DR-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

October 2, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: October 8, 2001.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that The Isfel Company has violated the requirements for participation in the Special Access Program, and has suspended The Isfel Company from participation in the Program for the two-year period October 8, 2001 through October 7, 2003.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner

to prohibit entry of products under the Special Access Program by or on behalf of The Isfel Company during the period October 8, 2001 through October 7, 2003, and to prohibit entry by or on behalf of The Isfel Company under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 2, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended The Isfel Company from participation in the Special Access Program for the period October 8, 2001 through October 7, 2003. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of The Isfel Company during the period October 8, 2001 through October 7, 2003. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of The Isfel Company manufactured from fabric exported from the United States during the period October 8, 2001 through October 7, 2003.

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 01-25092 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-DR-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Petition under the North American Free Trade Agreement (NAFTA)

October 2, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a petition for modification of the NAFTA rules of origin for gimped yarn made from certain filament yarn of nylon.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

SUMMARY:

On September 5, 2001 the Chairman of CITA received a petition from Unifi, Inc. (Unifi), alleging that certain untextured (flat) yarns of nylon classified under subheading 5402.41.90 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim a modification of the NAFTA rules of origin. The yarns are described as (1) of nylon, 7 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/m. (2) of nylon, 10 denier/7 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/m. (3) of nylon, 12 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/m.

Unifi requests the the NAFTA rules of origin for gimped yarns classified under subheading 5606.00 of the HTSUS be modified to allow the use of non-North American yarns of the type described above.

Such a proclamation may be made only after reaching agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this petition, in particular with regard to whether the nylon yarns described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by November 5, 2001 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

BACKGROUND: Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change,

the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification.

On September 5, 2001 the Chairman of CITA received a petition from Unifi, Inc. (Unifi), alleging that certain untextured (flat) yarns of nylon classified under subheading 5402.41.90 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim a modification of the NAFTA rules of origin. The yarns are described as (1) of nylon 7 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/m/10 denier/ (2) of nylon, 7 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50/turns/m. (3) of nylon, 12 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, etc. Unifi uses these yarns in producing their gimped yarn, classified under 5606.00 of the HTSUS.

CITA is soliciting public comments regarding this request, particularly with respect to whether the filament yarn of nylon, classified in HTSUS heading 5402.41.90, can be supplied by the domestic industry in commercial quantities in a timely manner. The petition states that Unifi has contacted known North American suppliers of these yarns and was unable to locate a supplier who produced the yarns in commercial quantities in a timely manner. Comments must be received no later than November 5, 2001. Interested persons are invited to submit six copies of such comments or information to the

Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that the filament yarn of nylon can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01-25091 Filed 10-4-01; 8:45 am]

BILLING CODE 3510-DR-S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038-0026, Gross Margining of Omnibus Accounts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Commission Regulation 1.58 which

requires futures commission merchants to carry omnibus accounts on a gross, rather than a net basis.

DATES: Comments must be submitted on or before December 4, 2001.

ADDRESSES: Comments may be mailed to Lawrence B. Patent, Division of Trading and Markets, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, (202) 418-5439; FAX: (202) 418-5545; email: lpatent@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
 - Ways to minimize the burden of 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.
- Gross Margining of Omnibus Accounts, OMB control number 3038-0026—Extension.

Commission Regulation 1.58 requires futures commission merchants to carry omnibus accounts on a gross, rather than a net, basis. This rule is promulgated pursuant to the Commission's rulemaking authority contained in Sections 5 and 5a of the Commodity Exchange Act, 7 U.S.C. 7 and 7a (2000).

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
1.58	225	On occasion	3,900	0.08	300

Dated: October 2, 2001.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01-25004 Filed 10-3-01; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: United States Military Academy, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date: Friday, October 26, 2001.

Place of Meeting: Superintendent's Conference Room, Taylor Hall, United States Military Academy, West Point, New York.

State Time of Meeting: Approximately 3 p.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Edward C. Clarke, United States Military Academy, West Point, NY 10996-5000, (845) 938-4200.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Review of the Academic, Military and Physical Programs, Bicentennial Campaign, Athletic Program, Admissions at USMA and USMAPS Program update. All proceedings are open.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01-25007 Filed 10-4-01; 8:45 am]

BILLING CODE 3710-09-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 5, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10202, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Karen_F_Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these

requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 1, 2001.

John Tressler,

Leader, Regulatory Information Management,
Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Fast Response Survey System: Survey on Effects of Energy Needs and Expenditures on U.S. Public Schools.

Frequency: One time.

Affected Public: State, Local and Tribal Govt.

Reporting and Recordkeeping Hour Burden:

Responses: 1,000.

Burden Hours: 500 hours.

Abstract: This survey will provide national estimates on energy needs of public school districts; actual expenditures for Fiscal Year 2000, budgeted and actual expenditures for Fiscal Year 2001, and budgeted expenditures for 2002. The survey will ask about methods used to cover budget shortfalls, and measures taken to minimize energy expenditures. The survey will also ask about cost-saving measures that school districts taken in Fiscal Years 2000, 2001, and 2002, but also the extent to which the chief financial officer of the school district perceives the school district has succeeded in reducing energy usage and cost per unit.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202-4651. Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776-7742 or via her internet address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 01-24949 Filed 10-4-01; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management

Site Recommendation Consideration Process—Further Extension of Public Comment Period

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of extension of public comment period.

SUMMARY: The Department of Energy (the Department) announces further extension of the public comment period to October 19, 2001 on the possible recommendation of the Yucca Mountain Site in Nevada for development as a spent nuclear fuel and high-level radioactive waste geologic repository.

DATES: The comment period is extended to October 19, 2001.

ADDRESSES: Written comments should be addressed to Carol Hanlon, U.S. Department of Energy, Yucca Mountain Site Characterization Office (M/S #205), P.O. Box 30307, North Las Vegas, Nevada, 89036-0307.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, (M/S #025), P.O. Box 30307, North Las Vegas, Nevada 89036-0307, 1-800-967-3477.

SUPPLEMENTARY INFORMATION: In the August 21, 2001, *Federal Register* Notice (66 FR 43850-43851), the Department announced the scheduling of public hearings in Las Vegas, Nevada, on September 5, 2001, in Amargosa Valley, Nevada on September 12, 2001, and in Pahrump, Nevada on September 13, 2001. The Department decided to postpone the latter two hearings in light of the recent terrorist attacks on the United States. In a notice published on September 27, 2001 (66 FR 49372-49373), the latter two hearings were rescheduled to October 10 and October 12, 2001, in Amargosa Valley, Nevada and Pahrump, Nevada, respectively. The comment period is now extended through October 19, 2001. The Secretary has also indicated that there will be a later public involvement opportunity closer to the decision time on the recommendation, the scope of which will be focused exclusively on issues

that could not have been raised in the current comment period. Any comments on issues that can be raised before October 19 must be filed within the current comment period to ensure their consideration.

Additional information on the Civilian Radioactive Waste Management program may be obtained at the Yucca Mountain web site at www.ymp.gov or by calling 1-800-967-3477.

Issued in Washington, DC on September 26, 2001.

Lake H. Barrett,

Acting Director.

[FR Doc. 01-24914 Filed 10-4-01; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01-336-000, et al.]

Wellhead Power Gates, LLC, et al.; Electric Rate and Corporate Regulation Filings

September 28, 2001.

Take notice that the following filings have been made with the Commission:

1. Wellhead Power Gates, LLC

[Docket No. EG01-336-000]

Take notice that on September 26, 2001, Wellhead Power Gates, LLC a California limited liability company (Applicant), with its principal executive office at 650 Bercut Drive, Suite C, Sacramento, California 95814, tendered for filing with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant is in the process of developing a 49.9 MW (gross) gas fired electrical generating facility to be located in southeastern Fresno County near Huron, California. Applicant will be engaged directly and exclusively in the business of owning and operating one or more eligible facilities and selling electric energy at wholesale.

Copies of the application have been served upon the Public Utility Commission of the State of California and the Securities and Exchange Commission.

Comment date: October 19, 2001, 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. Wellhead Power Panoche, LLC

[Docket No. EG01-337-000]

Take notice that on September 26, 2001, Wellhead Power Panoche, LLC, a California limited liability company (Applicant), with its principal executive office at 650 Bercut Drive, Suite C, Sacramento, California 95814, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is in the process of developing a 49.9 MW (gross) gas fired electrical generating facility to be located in southeastern Fresno County new Firebaugh, California. Applicant will be engaged directly and exclusively in the business of owning and operating one or more eligible facilities and selling electric energy at wholesale.

Copies of the application have been served upon the Public Utility Commission of the State of California and the Securities and Exchange Commission.

Comment date: October 19, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. MEP Pleasant Hill, LLC, MEP Pleasant Hill Operating, LLC, CPN Pleasant Hill Operating, LLC

[Docket Nos. EC01-155-000 and EL01-119-000]

Take notice that on September 26, 2001, MEP Pleasant Hill, LLC, MEP Pleasant Hill Operating, LLC, and CPN Pleasant Hill Operating, LLC (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of the disposition of jurisdictional facilities in connection with a sale and lease transaction involving the Aries Power Plant, a 600-MW natural gas-fired, combined cycle generating facility being constructed near Pleasant Hill, Cass County, Missouri. Applicants also request the Commission to issue an order disclaiming jurisdiction over certain passive participants in the transaction.

Comment date: October 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER01-3114-000]

Take notice, that on September 26, 2001, Southern California Edison Company (SCE) tendered for filing with

the Federal Energy Regulatory Commission (Commission) an Interconnection Facilities Agreement between SCE and the Pastoria Energy Facility, LLC (Pastoria Energy). This agreement specifies the terms and conditions pursuant to which SCE will interconnect 750 MW of generation to the California Independent System Operator Controlled Grid pursuant to SCE's Transmission Owner Tariff, FERC Electric Tariff, First Revised Original Volume No. 6.

SCE requests that this agreement become effective on September 25, 2001.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Pastoria Energy.

Comment date: October 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER01-3115-000]

Take notice that on September 26, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Gulf Power Company (Gulf), tendered for filing with the Federal Energy Regulatory Commission (Commission) an Interconnection Agreement (IA) by and between Gulf and Santa Rosa Energy LLC (Santa Rosa). The IA allows Santa Rosa to interconnect its generating facility to be located in Pace, Florida to Gulf's electric system

An effective date of August 27, 2001 has been requested.

Comment date: October 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Michigan Electric Transmission Company

[Docket No. ER01-3116-000]

Take notice that on September 26, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Letter Agreement with Panda Tallmudge Power, L.P. (Generator), dated August 30, 2001, (Agreement). Under the Agreement, certain preliminary construction activities are to be undertaken that are associated with providing an electrical connection between Michigan Transco's transmission system and a generating plant to be built by Generator. Michigan Transco requested that the Agreement be allowed to become effective August 30, 2001.

Copies of the filing were served upon Generator and the Michigan Public Service Commission.

Comment date: October 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Wellhead Power Gates, LLC

[Docket No. ER01-3117-000]

Take notice that on September 26, 2001, Wellhead Power Gates, LLC (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission), under section 205 of the Federal Power Act, a request for authorization to sell electricity at market-based rates under its proposed market-based tariff.

Comment date: October 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Wellhead Power Panoche, LLC

[Docket No. ER01-3118-000]

Take notice that on September 26, 2001, Wellhead Power Panoche, LLC (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission), under Section 205 of the Federal Power Act, a request for authorization to sell electricity at market-based rates under its proposed market-based tariff.

Comment date: October 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Central Maine Power Company

[Docket No. ER01-3119-000]

Take notice that on September 26, 2001, Central Maine Power Company (CMP), tendered for filing with the Federal Energy Regulatory Commission (Commission) an "Assignment and Assumption Agreement" between CMP, Northeast Empire Limited Partnership #1 (NELP) and Boralex Livermore Falls Inc. (Boralex). In accordance with Order No. 614, FERC Stats. & Regs. 31,096 (2000), CMP also tendered for filing a Revised Interconnection Agreement (the Revised IA), revised pursuant to the assignment transaction.

CMP respectfully requests that the Commission accept the Assignment and Assumption Agreement and the Revised IA effective as of September 10, 2001, without modification or condition, and grant waiver of any and all requirements, including the Commission's notice requirements for good cause, for these agreements to become effective. Copies of this filing have been served on NELP, Boralex, and the State of Maine Public Utilities Commission.

Comment date: October 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Kentucky Power Company

[Docket No. ER01-3120-000]

Take notice that on September 27, 2001, Kentucky Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission), an unexecuted Interconnection and Operation Agreement between Kentucky Power Company and Foothills Generating, L.L.C. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of November 26, 2001. Copies of Kentucky Power Company's filing have been served upon the Kentucky Public Service Commission.

Comment date: October 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER01-3092-000]

Take notice that on September 21, 2001, Commonwealth Edison Company (ComEd), submitted for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement for Firm Point-to-Point Transmission Service (Service Agreement) with Split Rock Energy, LLC (Split Rock) under the terms of ComEd's Open Access transmission tariff (OATT).

ComEd requests an effective date of September 1, 2001, and accordingly requests waiver of the Commission's notice requirements. A copy of this filing has been sent to Split Rock.

Comment date: October 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER01-3113-000]

Take notice that on September 26, 2001, PacifiCorp, tendered for filing with the Federal Energy Regulatory Commission (Commission), in accordance with 18 CFR Part 35 of the Commission's rules and regulations, a Network Integration Transmission Service Agreement with Bonneville Power Administration (Bonneville) under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: October 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 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 this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01-24968 Filed 10-4-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice Soliciting Comments, Final Terms and Conditions, Recommendations, and Prescriptions**

October 1, 2001.

Take notice that the following hydroelectric application and applicant prepared environmental assessment has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P-309-036.

c. *Date filed:* October 11, 2000.

d. *Applicant:* Reliant Energy Mid-Atlantic Power Holdings, LLC.

e. *Name of Project:* Piney Hydroelectric Project.

f. *Location:* On the Clarion River in Clarion County, Pennsylvania. The project would not utilize any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Thomas Teitt; Reliant Energy Mid-Atlantic

Power Holdings, LLC; 1001 Broad Street; Johnstown, Pennsylvania 15907-1050; (814) 533-8028

i. *FERC Contact:* John Costello, E-mail address, john.costello@ferc.fed.us, or telephone (202) 219-2914.

j. *Deadline for filing comments, final terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Protests, comments on filings, comments on environmental assessments and environmental impact statements, and reply comments may be filed electronically via the internet in lieu of paper. See 18 CFR

385.2001(a)(1)(iii) and the instructions on the Commission's web site (<http://www.ferc.gov>) under the "e-filing" link.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following: (1) the 427-foot-long and 139-foot-high concrete arch dam with crest elevation at 1,075 feet msl, an 84-foot-long left non-overflow wall, and a 200-foot-long right non overflow wall; (2) an 800-acre surface area reservoir; (3) an 84-foot-wide integral intake; (4) three 230-foot-long, 14-foot-diameter penstocks; (5) a powerhouse with 3 generating units totaling 28,300 kilowatts; (6) a 250-foot-long tailrace; (7) 700-foot-long and 900-foot-long transmission lines; and (8) appurtenant facilities.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208-1371. The application may be viewed on the web at <http://www.ferc.gov> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the

Johnstown, Pennsylvania, address in item h. above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Office of Energy Projects, Division of Environmental and Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 01-24972 Filed 10-4-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01-12-000]

Electricity Market Design and Structure; Notice of Workshops

September 28, 2001.

A series of commissioner-led workshops will be held October 15 through October 19, 2001, beginning at 10 a.m., in the Commission meeting room at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC.

The purpose of the workshops is to discuss core issues related to the development of efficient electric markets in an era where electric transmission systems will be operated by Regional Transmission Organizations. These issues include, but are not limited to, necessary market information, congestion management, cost recovery, market monitoring, transmission planning, business and reliability standards, the nature of transmission rights, and federal/state cooperation. The workshops will begin the process of developing a rulemaking on the market design and structure to be implemented through a pro forma tariff applicable to all public utilities and RTOs.

The workshops are open for the public to attend. There will be ample opportunity for public input in the rulemaking process, subsequent to the workshops. The Commission is inviting selected panelists on these topics to participate in these workshops; it is not at this time entertaining requests to make presentations. Additional details about the workshops will be provided in a subsequent notice, and will be posted on the Commission's web site under RTO Activities.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 01-24969 Filed 10-4-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL01-7-000]

Conference on Energy Infrastructure; Notice of Conference

September 28, 2001.

The Federal Energy Regulatory Commission (FERC) will hold a conference on energy infrastructure

issues in the Western states on Friday, November 2, 2001 at the WestCoast Grand Hotel in Seattle Washington.

The conference will discuss the Western region's electric and gas infrastructure (electric generation and transmission, and fuel delivery, and storage), and related matters. The Governors of the western states have been invited to participate. The goal is to identify regional infrastructure issues and their implications for the future economic development of the region. We look forward to an informative discussion of the issues, and how we can facilitate and enhance a comprehensive collaborative approach to energy infrastructure development. It is our firm belief that until we have an adequate well-functioning energy infrastructure, we cannot expect workably competitive markets.

The one-day meeting will begin at 9:00 a.m. and will end about 4:00 p.m. This conference will follow a meeting of the western Committee on Regional Electric Power Cooperation (CREPC) at the same location.

All interested parties are invited to attend the conference on November 2.

We will issue further details on the conference, including the agenda and a list of participating discussants, as plans evolve. For additional information, please contact Saida Shaalan at 202-208-0278 or Saida.Shaalan@ferc.fed.us.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 01-24970 Filed 10-4-01; 8:45 am]

BILLING CODE 6717-61-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2634]

Great Northern Paper, Inc.; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

October 1, 2001.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.¹ The restricted service list should contain the names of persons on the service list

¹ 18 CFR 385.2010.

who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the Maine State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing Section 106 of the National Historic Preservation Act, *as amended*, (16 U.S.C. Section 470f), to prepare a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Storage Project (FERC No. P-2634).

The programmatic agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.14). The Commission's responsibilities pursuant to Section 106 for the above project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Great Northern Paper, Inc. as prospective licensee for Project No. P-2634, and the Passamaquoddy Indian Tribe, Penobscot Indian Nation, and U.S. Bureau of Indian Affairs have interest in this proceeding are invited to participate in consultations to develop the programmatic agreement and to sign as a concurring party to the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for Project No. P-2634 as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20004
 Earle G. Shettleworth, Jr., State Historic Preservation Officer, Maine Historic Preservation Commission, 55 Capitol Street, 65 State House Station, Augusta, Maine 04333
 Brian R. Stetson, Manager of Environmental Affairs, Great Northern Paper, Inc., Engineering and Research Building, 1 Katahdin Ave., Millinocket, Maine 04462-1373
 Richard H. Hamilton, Chief, Penobscot Indian Nation, 6 River Road; Indian Island, Old Town, Maine 04468

Gregory W. Sample, Drummond Woodsum & MacMahon, 245 Commercial Street, P.O. Box 9781, Portland, Maine 04104-5081
 Jim Harriman, U.S. Bureau of Indian Affairs, Eastern Area Office, M.S. 260-VASQ, 3701 Fairfax Drive, Arlington, Virginia 22203-1700

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE, Washington, D.C. 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Linwood A. Watson, Jr.,
 Acting Secretary.
 [FR Doc. 01-24971 Filed 10-4-01; 8:45 am].
 BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7075-2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Rules ICR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Rules: OMB Control No. 2040-0204 expiring November 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 5, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1896.02 and OMB Control

No. 2040-0204, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260-2740, by E-mail at

Farmer.sandy@epamail.epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 1896.02. For technical questions about the ICR contact Lisa Christ at (202) 260-3967.

SUPPLEMENTARY INFORMATION:

Title: Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Rules ICR (OMB Control No. 2040-0204; EPA ICR No. 1896.02, expiring 11/30/01). This is a request for extension of a currently approved ICR.

Abstract: The Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Rules ICR is the result of a consolidation of activities covered in the 1998 Stage 1 DBPR ICR, some rules and activities covered in the 1993 PWSS ICR and activities and rules previously covered in other OGWDW standalone ICRs. This ICR will include: Stage 1 DBPR(EPA ICR Number 1896.01, OMB Control Number 2040-0204), Chemical Phase Rules (Phases II/IIB/V) (OMB Control Number 2040-0090, EPA ICR Number 0270.39), Unregulated Contaminant Monitoring Rule Lists 1 and 2 (OMB Control Number 2040-0208, EPA ICR Number 1882.02), 1976 Radionuclides and 2000 Radionuclides Rule (OMB Control Number 2040-0090, EPA ICR Number 0270.39), Total Trihalomethane Rule (OMB Control Number 2040-0090, EPA ICR Number 0270.39), and the Surface Water Treatment Rule (disinfectant residual monitoring only)(OMB Control Number 2040-0090, EPA ICR Number 0270.39). The Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Rules ICR requires information collection for data such as: Maximum contaminant levels (MCLs) for Stage 1 Disinfectants/Disinfection Byproducts for systems that treat their water with a chemical disinfectant, maximum residual disinfectant levels (MRDLs) for Chlorine, Chloramines, and Chlorine Dioxide, monitoring results for total organic carbon (TOC) and alkalinity for subpart H systems employing conventional filtration,

monitoring results for the compounds and contaminants addressed by the Chemical Phase Rules and UCMR, monitoring results for gross alpha particle activity, combined radium-226 and radium-228, separate radium-226 and radium-228, gross beta/photon emitters, radon and uranium as outlined in the 1976 Radionuclides and 2000 Radionuclides Rule. The regulatory initiatives discussed in this document are intended to protect public health and welfare from Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides contaminants. All of the data collected from PWSs and States are mandatory (40 CFR part 141 and 40 CFR part 142). Monitoring, reporting and record keeping are required at both the system and State levels under the National Primary Drinking Water Regulations (NPDWRs). EPA has chosen to require the least frequent collection that remains consistent with overall public health preservation objectives. Data collected allow States to identify in a timely fashion significant contaminant concentrations which might threaten the health and safety of drinking water consumers. The information collected in this ICR is used to aid in understanding the quality of drinking water, protect public health and welfare from Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides contaminants, make regulatory enforcement decisions and to oversee State programs. Primary users of the data collected under this ICR are the Office of Ground Water Drinking Water (OGWDW), Office of Enforcement & Compliance Assurance (OECA), Public Water System managers and primary agencies, which include State regulators, Indian Tribes and occasionally Regional Administrators. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 1, 2001 and no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 1.6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions;

develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Existing Public Water Systems and Primacy Agencies.

Estimated Number of Respondents: 167,894.

Frequency of Response: varies by requirement (i.e. monthly, quarterly, annually).

Estimated Total Annual Hour Burden: 4,134,816 hours.

Estimated Total Annualized Capital, O&M Cost Burden: \$256,833,000. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1896.02 and OMB Control No. 2040-0204 in any correspondence.

Dated: September 20, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01-25001 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7075-1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reporting and Recordkeeping Activities Associated With EPA's PFC Emission Reduction Partnership for the Semiconductor Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping Activities Associated With EPA's PFC

Emission Reduction Partnership for the Semiconductor Industry, OMB Control Number 2060-0382, expiration date September 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost, where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 5, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1823.02 and OMB Control No. 2060-0382, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260-4901, by E-mail at auby.susan@epamail.epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 1823.02. For technical questions about the ICR contact Scott Bartos at (202) 564-9167.

SUPPLEMENTARY INFORMATION: Title: PFC Emission Reduction Partnership for the Semiconductor Industry, OMB Control No. 2060-0382, EPA ICR No. 1823.02, expiration date September 30, 2001. This is a request for extension of a currently approved collection.

Abstract: Following the 1993 introduction of the Climate Change Action Plan, U.S. EPA's Office of Atmospheric Programs launched the PFC Emission Reduction Partnership for the Semiconductor Industry. This important voluntary program contributes to the country's overall reduction in greenhouse gas emissions. Like Energy Star Buildings and the Voluntary Aluminum Industrial Partnership, the PFC Emission Reduction Partnership for the Semiconductor Industry is a voluntary effort aimed at preventing pollution before it is generated. These voluntary programs all focus on reducing greenhouse gas emissions and tracking progress by collecting information from partners on a periodic basis. The PFC Emissions Reduction Partnership for the Semiconductor Industry is a voluntary, non-regulatory program that supports the industry's efforts to reduce perfluorocompound (PFC) emissions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 25, 2001, (66 FR 33680); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 598 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Semiconductor manufacturers.

Estimated Number of Respondents: 25.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 14,950 hours.

Estimated Total Annualized Capital, O&M Cost Burden: \$139,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1823.02 and OMB Control No. 2060-0382 in any correspondence.

Dated: September 26, 2001.

Oscar Morales,

Director, Collection Strategies Division.
[FR Doc. 01-25002 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7074-9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Public Water System Supervision Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Public Water System Supervision Program, OMB Control No. 2040-0090 expiring September 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 5, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 02740, and OMB Control No. 2040-0090, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260-2740, by E-mail at Farmer.sandy@epamail.epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 0270.40. For technical questions about the ICR contact Lisa Christ at (202) 260-3967 of the Office of Ground Water Drinking Water.

SUPPLEMENTARY INFORMATION:

Title: Public Water System Supervision Program (OMB Control No. 2040-0090; EPA ICR No. 0270.40) expiring September 30, 2001. This is a request for extension of a currently approved ICR.

Abstract: The 2001 PWSS Program ICR is the result of a consolidation of some rules and activities covered in the 1993 PWSS ICR and activities and rules previously covered in other OGWDW standalone ICRs. The 2001 PWSS Program ICR will include: General State

and Indian Primacy activities, Variance & Exemptions Rule (EPA ICR Number 0270.39), Primacy Regulations Activities (Administrative Penalty Authority) (EPA ICR Number 1836.01; OMB Control Number 2040-0195), Capacity Development Program, Operator Certification Guidelines and Expense Grant Reimbursement Program (EPA ICR Number 1955.01), and Consumer Confidence Reports (OMB Control Number 2040-0201, EPA ICR Number 1832.02). Rules and activities previously covered in the 1993 PWSS Program ICR, and not addressed in this one, have administratively moved to other OGWDW ICRs as appropriate. This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR parts 141 and 142. Sections 1401 and 1412 of the Safe Drinking Water Act (SDWA), as amended, require EPA to establish National Primary Drinking Water Regulations (NPDWRs) for contaminants that may have an adverse human health effect. The Act further requires EPA to monitor and enforce these regulations to ensure a supply of drinking water, which dependably complies with the maximum contaminant levels (MCLs) set forth in 40 CFR part 141, subpart B. Section 1445 of SDWA stipulates that every supplier of water shall conduct monitoring, maintain records, and provide such information as is needed for the Agency to carry out its monitoring and enforcement responsibilities with respect to SDWA. Implementation of these monitoring requirements is principally a responsibility of the States, particularly those States that have assumed primary enforcement responsibility (primacy) for public water systems under SDWA section 1413. EPA has chosen to require the least frequent collection that remains consistent with overall public health preservation objectives. Data collected allow States to identify in a timely fashion significant contaminant concentrations which might threaten the health and safety of drinking water consumers. The information collected in this ICR is used to aid in understanding the quality of drinking water, make regulatory enforcement decisions, oversee State programs, and make decisions regarding EPA grants. Primary users of the data collected under this ICR are Office of Ground Water Drinking Water (OGWDW), Office of Enforcement & Compliance Assurance (OECA), Public Water System managers and primacy agencies, which include State regulators, Indian Tribes and occasionally Regional Administrators. An agency may not conduct or sponsor,

and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on May 2, 2001 and one comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6.9 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: New and Existing Public Water Systems and Primacy agencies.

Estimated Number of Respondents: 168,302.

Frequency of Response: varies by requirement (e.g. monthly, quarterly, annually)

Estimated Total Annual Hour Burden: 1,864,559 hours.

Estimated Total Annualized Capital, O&M Cost Burden: \$64,106,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0270.40 and OMB Control No. 2040-0090 in any correspondence.

Dated: September 26, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01-25003 Filed 10-3-01; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7074-8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Microbial Rules ICR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Microbial ICR, OMB control Number 2040-0205 expiring November 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 5, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1895.02 and OMB Control No. 2040-0205, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260-2740, by E-mail at

Farmer.sandy@epamail.epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 1895.02. For technical questions about the ICR contact Lisa Christ at (202) 260-3967 of the Office of Ground Water Drinking Water (OGWDW).

SUPPLEMENTARY INFORMATION:

Title: Microbial (OMB Control No. 2040-0205; EPA ICR No. 1895.02) expiring November 30, 2001. This is a request for extension of a currently approved ICR.

Abstract: The Microbial ICR is the result of a consolidation of activities covered in the 1998 Interim Enhanced Surface Water Treatment Rule ICR, some rules and activities covered in the 1993 Public Water System Supervision ICR and activities and rules previously covered in other OGWDW standalone ICRs. The Microbial ICR will include:

Surface Water Treatment Rule (all components except disinfectant residual monitoring) (OMB Control Number 2040-0090, EPA ICR Number 0270.39), Total Coliform Rule (OMB Control Number 2040-0090, EPA ICR Number 0270.39), Interim Enhanced Surface Water Treatment Rule (OMB Control Number 2040-0205, EPA ICR number 1895.01), and the Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium in Water. Filter Backwash Recycle Rule (OMB Control Number 2040-0224, EPA ICR Number 1928.02) will be added via an Information Correction Worksheet upon approval. The Microbial ICR requires information collection of data such as: turbidity measures, raw water coliform data, coliform bacteria levels in distribution systems, E. coli and fecal coliform data as necessary, data regarding results of sanitary surveys and backwash recycle practice and flow information. The regulatory initiatives discussed in this document are intended to protect public health and welfare from microbial contaminants. The Lab Quality Assurance Program, which collects data from laboratories for laboratory certification or approval are not mandatory, but laboratories must provide it in order to obtain or retain a benefit. All of the data collected from Public Water Systems and States are mandatory (40 CFR part 141 and 40 CFR part 142). Monitoring, reporting and record keeping are required at both the system and State levels under the National Primary Drinking Water Regulations (NPDWRs). EPA has chosen to require the least frequent collection that remains consistent with overall public health preservation objectives. Data collected allow States to identify in a timely fashion significant contaminant concentrations which might threaten the health and safety of drinking water consumers. The information collected in this ICR is used to aid in understanding the quality of drinking water, protect public health and welfare from microbial contaminants, make regulatory enforcement decisions and to oversee State programs. Primary users of the data collected under this ICR are the Office of Ground Water Drinking Water (OGWDW), Office of Enforcement & Compliance Assurance (OECA), Public Water System managers and primacy agencies, which include State regulators, Indian Tribes and occasionally Regional Administrators. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for

EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 320.8(d), soliciting comments on this collection of information was published on June 1, 2001 and no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average less than a half hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Existing PWSs, Laboratories and Primacy Agencies.

Estimated Number of Respondents: 167,954.

Frequency of Response: Varies by requirement (e.g. monthly, quarterly, annually).

Estimated Total Annual Hour Burden: 8,198,417 hours.

Estimated Total Annualized Capital, O&M Cost Burden: \$82,707,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1895.02 and OMB Control No. 2040-0205 in any correspondence.

Dated: September 26, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01-25010 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7074-7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Pollutant Discharge Elimination System (NPDES) and Sewage Sludge Monitoring Reports; OMB Control No. 2040-0004; EPA ICR No. 0229.15

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Pollutant Discharge Elimination System (NPDES) and Sewage Sludge Monitoring Reports; OMB Control No. 2040-0004; EPA ICR No. 0229.15; expiring September 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 5, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 0229.15 and OMB Control No. 2040-0004 to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer by telephone at (202) 260-2740, by e-mail at Farmer.sandy@epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 0229.15. For technical questions about the ICR contact Jack Faulk at (202) 564-0768 in EPA's Office of Wastewater Management.

SUPPLEMENTARY INFORMATION:

Title: National Pollutant Discharge Elimination System (NPDES) and Sewage Sludge Monitoring Reports; (OMB Control No. 2040-0004; EPA ICR No. 0229.15) expiring 09/30/01. This is a request for extension of a currently approved collection.

Abstract: This ICR estimates the current monitoring, recordkeeping and

costs associated with submitting and reviewing Discharge Monitoring Reports (DMRs), sewage sludge monitoring reports, and other monitoring reports under the Environmental Protection Agency's (EPA) NPDES program. The NPDES program regulations, codified at 40 CFR parts 122 through 125, require permitted municipal and non-municipal point source discharges to collect, analyze, and submit data on their wastewater discharges. Under these regulations, the permittee is required to collect and analyze wastewater samples and perform other types of discharge monitoring and report the results to the permitting authority (EPA or an authorized NPDES State). Sample monitoring, analysis, and reporting frequencies vary by permit, but for the most part, must be performed at least annually for all permitted discharges. Upon renewal of this ICR, the permitting authority will continue to require NPDES and sewage sludge facilities to report pollutant discharge monitoring data. The permitting authority will use the data from these forms to assess permittee compliance, modify/add new permit requirements, and revise effluent guidelines. The monitoring data required of NPDES and sewage sludge facilities represents the minimum 2 information necessary to achieve the Agency's goals and satisfy regulatory standards. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 8, 2001 (66 FR 9574); two comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 24.9 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: NPDES permittees, including publicly owned treatment works, privately owned treatment works, industrial facilities, and storm water permittees, and sewage sludge handlers and domestic septage haulers.

Estimated Number of Respondents: 86,135.

Frequency of Response: varied, but for the most part at least annually.

Estimated Total Annual Hour Burden: 15,041,011.

Estimated Total Annualized Capital, O&M Cost Burden: \$0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0229.15 and OMB Control No. 2040-0004 in any correspondence.

Dated: September 26, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01-25011 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6622-4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or www.epa.gov/oeqa/ofa. Weekly receipt of Environmental Impact Statements

Filed September 24, 2001 Through September 28, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010362, Final EIS, BLM, CA, Cadiz Groundwater Storage and Dry-Year Supply Program, Construction and Operation, Amendment of the California Desert Conservation Area (CDCA) Plan, Issuance of Right-of-Way Grants and Permits, San Bernardino County, CA, Due: November 05, 2001, Contact: James Williams (909) 697-5390.

EIS No. 010363, Draft EIS, FRC, ME, Presumpscot River Projects, Relicensing of Five Hydroelectric Projects for Construction and Operation, Dundee Project (FERC No. 2942); Gambo Project (FERC No. 2931); Little Falls Project (FERC No.

2932); Mallison Falls Project (FERC No. 2941) and Saccarappa Project (FERC No. 2897), Cumberland County, ME, Due: December 04, 2001, Contact: James Haimes (202) 219-2780. This document is available on the Internet at: <http://www.ferc.fed.us/online/htm>.

EIS No. 010364, Draft EIS, FHW, PA, Blair Mill Road Corridor Improvement Project, Widening of Blair Mill Road between Welsh Road, Horsham Road and between Moreland Avenue and County Line Road in Horsham and Upper Moreland Townships, Montgomery County, PA, Due: November 23, 2001, Contact: James A Cheatham (717) 221-3461.

EIS No. 010365, Draft EIS, RUS, AK, Southern Intertie Project, Constructing and Operating a new 138kV Transmission Line between the Kenai Peninsula and Anchorage, Right-of-Way Permit, Special-Use Permit, COE Section 10 and 404 Permit, Kenai Peninsula to Anchorage, AK, Due: December 05, 2001, Contact: Lawrence R. Wolfe (202) 720-1784. This document is available on the Internet at: <http://www.usda.gov/rus/water/ees/eis/htm>.

EIS No. 010366, Draft EIS, AFS, OR, Lemolo Watershed Projects, Implementing the Objectives for Management Areas 5 and 10 and Matrix Lands, Umpqua National Forest, Diamond Lake Ranger District, Douglas County, OR, Due: November 19, 2001, Contact: Patrick S. Williams (541) 498-2531.

EIS No. 010367, Draft EIS, BIA, CA, NV, Truckee River Water Quality Settlement Agreement-Federal Water Right Acquisition, Implementation, Truckee River, Placer County, CA and Washoe, Storey and Lyon Counties, NV, Due: December 03, 2001, Contact: Tom Strekal (775) 887-3500.

EIS No. 010368, Final Supplement, JUS, Cannabis Eradication in the Contiguous United States and Hawaii, Updated Information on Herbicidal Eradication New Scientific Data, Due: November 05, 2001, Contact: Joyce M. Elliott (202) 307-8923. This document is available on the Internet at: <http://www.dea.gov/pubs/pblist.htm>.

EIS No. 010369, Draft EIS, NPS, GA, Fort Frederica National Monument General Management Plan, Implementation, Saint Simons Island, Glynn County, GA, Due: December 15, 2001, Contact: Mike Tennent (912) 638-3630.

EIS No. 010370, Draft EIS, BIA, CA, Teayawa Energy Center, Construction and Operation of a 600 megawatt (MW) (nominal output), Natural-Gas-Fired, Combined-Cycle Energy Center,

On Indian Trust Land, Torres Martinez Desert Cahuilla Indians Tribe, Coachella Valley, Riverside County, CA, Due: December 03, 2001, Contact: William Allan (916) 978-6043.

EIS No. 010371, Draft Supplement, AFS, CA, Herger-Feinstein Quincy Library Group Forest Act Pilot Project, Proposal to Analyze Options for Maintaining Defensible Fuel Profile Zones (DFPZs), Lassen, Plumas and Tahoe National Forests, Shasta, Lassen, Tehama, Yuba, Plumas and Battle Counties, CA, Due: November 19, 2001, Contact: David Arrasmith (916) 492-7559.

Amended Notices

EIS No. 010024, Draft EIS, FAA, CA, Los Angeles International Airports, Proposed Master Plan Improvements on Runway, New Taxiwaytops, New Terminal, New Air Cargo and Maintenance, Funding, Los Angeles, Los Angeles County, CA, Due: November 9, 2001, Contact: David B. Kessler (310) 725-3615.

Revision of FR Notice Published on 02/02/2001: CFQ Review Period Ending on 09/24/2001 has been Extended to 11/09/2001.

Dated: October 2, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01-25025 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6622-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (66 FR 27647).

Draft EISs

ERP No. D-AFS-F65029-IL Rating EC2, Midewin National Tallgrass, Proposed Land and Resource Management Plan, Implementation, Prairie Plan Development, Will County, IL.

Summary: EPA expressed environmental concerns with potential adverse impacts to water and air quality, existing wetland functions, from invasive species and of the non-target impacts of agricultural practices.

ERP No. D-AFS-G65079-NM Rating LO,

Talpa-to-Penasco Proposed to Construct and Operate 69 kV Transmission Line, Kit Carson Electric Cooperative, Carson National Forest, Gamine Real Ranger District, Taos County, NM.

Summary: While EPA has no objections to the selection of the preferred alternative (Alternative B), EPA did recommend that the Final EIS make a commitment that mitigation measures be incorporated into the Record of Decision document.

ERP No. D-FAA-K51039-CA Rating

EO2, Los Angeles International Airports, Proposed Master Plan Improvements on Runway, New Taxiways, New Terminal, New Air Cargo and Maintenance, Funding, Los Angeles, Los Angeles County, CA.

Summary: EPA expressed environmental objections due to projected violations of the National Ambient Air Quality Standards; disproportionately high, adverse effects on low income and minority communities from aircraft noise; potential health effects from air pollutants; and the failure to fully evaluate a regionally-based alternative. EPA requested additional information on these issues and appropriate mitigation to reduce projected impacts.

ERP No. D-FHW-E40789-MS Rating

EO2, East Harrison County Connector Construction, I-10 to US 90, Funding, US Army COE and US Coast Guard Permits Issuance and Possible Transfer of Federal Lands, Harrison County, MS.

Summary: EPA expressed objections due to extensive wetland impacts, noise impacts, and hazardous waste impacts. EPA requested additional information and mitigation of these issues.

ERP No. D-FHW-IH40397-MO Rating

LO, Interstate 70 Corridor Improvements, Kansas City to St. Louis, Funding, US Army COE Section 404 and 10 and US Coast Guard Section 9 Permits Issuance, several counties, MO.

Summary: EPA expressed a lack of objections to the First Tier DEIS. EPA recommended that the FHWA also examine the merits of including "truck only" features (in addition to widening existing 1-70) in the Metropolitan Kansas City and St. Louis sections of the I-70 improvements for enhancing the project's ability to meet stated purposes(s) and need(s).

ERP No. D-UAF-J11019-MT Rating EC2, Montana Air National Guard Air-to-Ground Training Range Development for Use by the 120th Fighter Wing (120th FW), Implementation, Phillips and Blaine Counties, MT.

Summary: EPA expressed environmental concerns about impact to people and wildlife from noise and visual stimuli from low altitude F-16 flights, and noted the need for monitoring for hazardous contaminants, and development of a weed control strategy, and improved analysis and disclosure of environmental justice concerns. EPA also recommended that the FEIS include a more comprehensive alternatives matrix to more fully summarize environmental consequences and provide a clearer basis for choice among alternatives.

ERP No. DS-FAA-F51046-MN Rating

EC2, Flying Cloud Airport, Substantive Changes to Alternatives and New Information, Extension of the Runways 9R/27L and 9L/27R, Long-Term Comprehensive Development, In the City of Eden Prairie, Hennepin County, MN.

Summary: EPA expressed concern regarding future noise levels and requested that the FEIS identify and discuss what provisions will be in place to monitor and mitigate, if necessary, any future significant increases in noise levels from those estimated in the SDEIS.

Final EISs

ERP No. F-AFS-L65366-AK

Woodpecker Project Area, Timber Harvesting, Dispersed Recreation Opportunities and Watershed Improvements, Implementation, Tongass National Forest, Petersburg Ranger District, Mitkof Island, Petersburg, AK.

Summary: No formal comment letter sent to the preparing agency.

ERP No. F-AFS-L65369-OR Mill Creek Timber Sales and Related Activities, To Implement Ecosystem Management Activities, Prospect Ranger District, Rogue River National Forest, Jackson County, OR.

Summary: EPA has a lack of objections to the proposed timber sale and related activities.

ERP No. F-FAA-E51048-CA Hartsfield Atlanta International Airport, Construction and Operation of the 9,000-Foot Fifth Runway and Associated Projects, Approval of Airport Layout Plan (ALP), City of Atlanta, Fulton and Clayton Counties, GA.

Summary: EPA continues to express concern regarding noise, air quality and

EJ impacts. EPA recommended additional mitigation and that all mitigation be committed to in the ROD.

ERP No. F-FAA-F51047-00 Chicago Terminal Airspace Project (CTAP), For Proposed Air Traffic Control Procedures and Airspace Modification for Aircraft Operations to/from the Chicago Region, Including Chicago O'Hare International Airport, Chicago Midway Airport, Milwaukee Mitchell International Airport, IL, IN and WI.

Summary: EPA has no objections to the action as proposed.

ERP No. F-FHW-E40769-TN TN-385 (Collierville-Arlington Parkway) Improvement Project, Construction from Mt. Pleasant Road to South of Interstate 40, Shelby and Fayette Counties, TN.

Summary: EPA remains concerned about degradation of water quality in the Wolf River and other tributaries not meeting designated uses from erosion, situation and other pollutants associated with road construction and operations.

ERP No. F-FHW-G40161-AR Southeast Arkansas I-69 Connector Construction, US-278 in the vicinity of Monticello to I-530 in Pine Bluff, Funding and US Army COE Section 404 and NPDES Permits Issuance, Drew, Lincoln, Cleveland and Jefferson Counties, AR.

Summary: EPA has no objection to the selection of the preferred alternative. EPA has no other comments to offer on the FEIS.

Dated: October 2, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01-25026 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7075-3]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; "Announcement of Proposal Deadline for the Competition for Fiscal Year 2002 Supplemental Assistance to the National Brownfields Assessment Demonstration Pilots"

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal deadline and guidelines.

SUMMARY: The Environmental Protection Agency (EPA) will begin to accept proposals for supplemental assistance for the National Brownfields

Assessment Pilots on October 5, 2001. Assessment pilots awarded on or before September 30, 2000, may apply for up to \$150,000 for continuance and expansion of their brownfields assessment efforts. This supplemental funding will be awarded on a competitive basis. Recipients of supplemental assessment pilot funding in FY2001 are *not* eligible to apply (See Catalogue of Federal Domestic Assistance Number: 66.811).

In fiscal year 2002, an additional \$50,000 may be awarded to an applicant to assess the contamination of a brownfields site(s) that is or will be used for greenspace purposes. Greenspace purposes may include, but are not limited to, parks, playgrounds, trails, gardens, habitat restoration, open space, and/or greenspace preservation.

EPA expects to select up to 38 National brownfields assessment pilots to receive supplemental assistance by April 2002. The deadline for proposals for the 2002 supplemental assistance is *November 26, 2001*. All proposals must be postmarked by USPS or delivered at U.S. EPA Headquarters by other means, no later than November 26, 2001, and a duplicate copy sent to the appropriate U.S. EPA Regional Office.

The supplemental assistance for the National brownfields assessment pilots will be administered on a competitive basis. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff will assess how well the proposals meet the selection criteria outlined in the application booklet *The Brownfields Economic Redevelopment Initiative: Proposal Guidelines for Supplemental Assistance for the Brownfields Assessment Demonstration Pilots* (September 2001). The evaluation panels make recommendations to EPA senior management. Final award decisions are made by EPA senior management, and may take into account policy considerations such as geographic distribution of funds. Applicants are encouraged to contact and, if possible, meet with EPA Regional Brownfields Coordinators.

DATES: This action is effective as of October 5, 2001, and expires on November 26, 2001. All proposals must be sent via registered or tracked (return receipt) mail and postmarked by USPS no later than November 26, 2001. Proposals must be sent to U.S. EPA Headquarters and a duplicate copy sent to the appropriate U.S. EPA Regional Office. Applicants may also send their proposals by commercial delivery service provided the proposals arrive at U.S. EPA Headquarters and the

appropriate U.S. EPA Regional Office on or before close of business on November 26, 2001.

ADDRESSES: Mailing addresses for U.S. EPA Headquarters and U.S. EPA Regional Offices are provided in the Proposal Guidelines.

Obtaining Proposal Guidelines: The proposal guidelines are available via the Internet: <http://www.epa.gov/brownfields/>

Copies of the Proposal Guidelines will also be mailed upon request. Requests should be made by calling the U.S. EPA Call Center at the following numbers: Washington, DC Metro Area at 703-412-9810
Outside Washington, DC Metro at 1-800-424-9346
TDD for the Hearing Impaired at 1-800-553-7672

In order to ensure that the Guidelines are received in time to be used in the preparation of the proposal, applicants should request a copy as soon as possible and in any event no later than seven (7) working days before the proposal due date. Applicants who request copies after that date might not receive the proposal guidelines in time to prepare and submit a responsive proposal.

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Outreach and Special Projects Staff, (202) 260-4039.

SUPPLEMENTARY INFORMATION: As a part of the Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative, the Brownfields Assessment Demonstration Pilots are designed to empower States, communities, tribes, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, and safely cleanup brownfields to promote their sustainable reuse. EPA has awarded cooperative agreements to States, cities, towns, counties and Tribes for demonstration pilots that test brownfields assessment models and facilitate coordinated public and private efforts at the Federal, State, tribal and local levels. To date, the Agency has funded 399 Brownfields Assessment Pilots.

In fiscal year 2002, EPA has determined that brownfields assessment pilots awarded on or before September 30, 2000, may apply for up to \$150,000 for continuance and expansion of their brownfields assessment efforts. Recipients of supplemental assessment pilot funding in FY2001 are *not* eligible to apply. These pilots focus on EPA's primary mission—protecting human health and the environment. They are

also an essential piece of the nation's overall community revitalization efforts. EPA works closely with other federal agencies through the Interagency Working Group on Brownfields, and builds relationships with other stakeholders on the national and local levels to develop coordinated approaches for community revitalization.

Supplemental funding for the brownfields assessment pilots is authorized under Section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA or Superfund), 42 U.S.C. 9604(d)(1). States (including U.S. Territories), political subdivisions (including cities, towns, counties), and federally recognized Indian Tribes which received a brownfields assessment pilot grant on or before September 30, 2000, are eligible to apply. EPA welcomes and encourages brownfields projects by coalitions of such entities, but only a single eligible entity may receive a cooperative agreement. Cooperative agreement funds will be awarded only to a state, a political subdivision of a state, or a federally recognized Indian tribe.

Through a brownfields cooperative agreement, EPA provides funds to an eligible state, political subdivision, or Indian Tribe to undertake activities authorized under CERCLA section 104. Use of these supplemental assistance pilot funds must be in accordance with CERCLA, and all CERCLA restrictions on use of funds also apply to the assessment pilots.

The evaluation panels will review the proposals carefully and assess each response based on how well it addresses the selection criteria, briefly outlined below. Applicants should address all of the evaluation criteria. Responses to the evaluation criteria will be utilized to determine whether to make an award and the amount of funds to be awarded. All evaluation criteria are equally important. There is no guarantee of an award.

Part I (Required)

1. Established Brownfields Program
2. Accomplishments under Existing Brownfields Assessment Pilot
3. Demonstrated Ability to Administer Existing Brownfields Assessment Demonstration Pilot
4. Work to be Performed

Part II (Optional)

5. Greenspace
- Authority and Context
- Community Involvement
- Site Identification, Site Assessment Plan, Flow of Ownership, and Reuse Planning

Dated: September 20, 2001.

Linda Garczynski,

Director, Outreach and Special Projects Staff,
Office of Solid Waste and Emergency
Response.

[FR Doc. 01-25014 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7075-4]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; "Announcement of Proposal Deadline for the Competition for the 2002 National Brownfields Assessment Demonstration Pilots"

AGENCY: Environmental Protection
Agency.

ACTION: Notice of proposal deadlines,
revised guidelines.

SUMMARY: The Environmental Protection
Agency (EPA) will begin to accept
proposals for the National Brownfields
Assessment Pilots on October 5, 2001.
The brownfields assessment pilots (each
funded up to \$200,000 over two years)
test assessment models, and facilitate
coordinated assessment and cleanup
efforts at the federal, state, and local
levels (see Catalogue of Federal
Domestic Assistance Number: 66.811).

In fiscal year 2002, an additional
\$50,000 may be awarded to an applicant
to assess the contamination of a
brownfields site(s) that is or will be
used for greenspace purposes.
Greenspace purposes may include, but
are not limited to, parks, playgrounds,
trails, gardens, habitat restoration, open
space, and/or greenspace preservation.

EPA expects to select up to 38
additional National brownfields
assessment pilots by April 2002. The
deadline for new proposals for the 2002
assessment pilots is *December 10, 2001*.
All proposals must be postmarked by
USPS or delivered at U.S. EPA
Headquarters by other means, no later
than December 10, 2001, and a
duplicate copy sent to the appropriate
U.S. EPA Regional Office. Previously
unsuccessful applicants are advised that
they must revise and resubmit their
proposals to be considered for the 2002
National assessment pilot competition.

The National brownfields assessment
pilots are administered on a competitive
basis. To ensure a fair selection process,
evaluation panels consisting of EPA
Regional and Headquarters staff and
other federal agency representatives will
assess how well the proposals meet the
selection criteria outlined in the newly

revised application booklet *The
Brownfields Economic Redevelopment
Initiative: Proposal Guidelines for
Brownfields Assessment Demonstration
Pilots* (September 2001). The evaluation
panels make recommendations to EPA
senior management. Final award
decisions are made by EPA senior
management, and may take into account
policy considerations such as
geographic distribution of funds.
Applicants are encouraged to contact
and, if possible, meet with EPA
Regional Brownfields Coordinators.

DATES: This action is effective as of
October 5, 2001, and expires on
December 10, 2001. All proposals must
be sent via registered or tracked (return
receipt) mail and postmarked by USPS
no later than December 10, 2001.
Proposals must be sent to U.S. EPA
Headquarters and a duplicate copy sent
to the appropriate U.S. EPA Regional
Office. Applicants may also send their
proposals by commercial delivery
service provided the proposals arrive at
U.S. EPA Headquarters and the
appropriate U.S. EPA Regional Office on
or before close of business on December
10, 2001.

ADDRESSES: Mailing addresses for U.S.
EPA Headquarters and U.S. EPA
Regional Offices are provided in the
Proposal Guidelines.

Obtaining Proposal Guidelines: The
proposal guidelines are available via the
Internet: [http://www.epa.gov/
brownfields/](http://www.epa.gov/brownfields/)

Copies of the Proposal Guidelines will
also be mailed upon request. Requests
should be made by calling the U.S. EPA
Call Center at the following numbers:

Washington, DC Metro Area at 703-
412-9810

Outside Washington, DC Metro at 1-
800-424-9346

TDD for the Hearing Impaired at 1-800-
553-7672

In order to ensure that the Guidelines
are received in time to be used in the
preparation of the proposal, applicants
should request a copy as soon as
possible and in any event no later than
seven (7) working days before the
proposal due date. Applicants who
request copies after that date might not
receive the proposal guidelines in time
to prepare and submit a responsive
proposal.

FOR FURTHER INFORMATION CONTACT: The
U.S. EPA's Office of Solid Waste and
Emergency Response, Outreach and
Special Projects Staff, (202) 260-4039.

SUPPLEMENTARY INFORMATION: As a part
of the Environmental Protection
Agency's (EPA) Brownfields Economic
Redevelopment Initiative, the

Brownfields Assessment Demonstration
Pilots are designed to empower States,
communities, tribes, and other
stakeholders in economic
redevelopment to work together in a
timely manner to prevent, assess, and
safely cleanup brownfields to promote
their sustainable reuse. EPA has
awarded cooperative agreements to
States, cities, towns, counties and Tribes
for demonstration pilots that test
brownfields assessment models and
facilitate coordinated public and private
efforts at the Federal, State, tribal and
local levels. To date, the Agency has
funded 399 Brownfields Assessment
Pilots.

EPA's goal is to select a broad array
of assessment pilots that will serve as
models for other communities across the
nation. EPA seeks to identify proposals
that demonstrate the integration or
linking of brownfields assessment pilots
with other federal, state, tribal, and local
sustainable development, community
revitalization, and pollution prevention
programs. Special consideration will be
given to Federal Empowerment Zones
and Enterprise Communities (EZ/ECs),
communities with populations of under
100,000, and federally recognized
Indian tribes. These pilots focus on
EPA's primary mission—protecting
human health and the environment.
However, it is an essential piece of the
nation's overall community
revitalization efforts. EPA works closely
with other federal agencies through the
Interagency Working Group on
Brownfields, and builds relationships
with other stakeholders on the national
and local levels to develop coordinated
approaches for community
revitalization.

Funding for the brownfields
assessment pilots is authorized under
Section 104(d)(1) of the Comprehensive
Environmental Response,
Compensation, and Liability Act of
1980, as amended, (CERCLA or
Superfund), 42 U.S.C. 9604(d)(1). States
(including U.S. Territories), political
subdivisions (including cities, towns,
counties), and federally recognized
Indian Tribes are eligible to apply. EPA
welcomes and encourages brownfields
projects by coalitions of such entities,
but only a single eligible entity may
receive a cooperative agreement.
Cooperative agreement funds will be
awarded only to a state, a political
subdivision of a state, or a federally
recognized Indian tribe.

Through a brownfields cooperative
agreement, EPA provides funds to an
eligible state, political subdivision, or
Indian Tribe to undertake activities
authorized under CERCLA section 104.
Use of these assessment pilot funds

must be in accordance with CERCLA, and all CERCLA restrictions on use of funds also apply to the assessment pilots.

The evaluation panels will review the proposals carefully and assess each response based on how well it addresses the selection criteria, briefly outlined below. Applicants should address all of the evaluation criteria. Responses to the evaluation criteria will be utilized to determine whether to make an award and the amount of funds to be awarded. All evaluation criteria are equally important. There is no guarantee of an award.

Part I (Required)

1. Problem Statement and Needs Assessment
 - Effect of Brownfields on your Community or Communities
 - Value Added by Federal Support
 2. Community-Based Planning and Involvement
 - Existing Local Commitment
 - Community Involvement Plan
 - Environmental Justice Plan
 3. Implementation Planning
 - Government Support
 - Site Selection and Environmental Site Assessment Plan
 - Reuse Planning and Proposed Cleanup Funding Mechanisms
 - Flow of Ownership Plan
 4. Long-Term Benefits and Sustainability
 - Long-Term Benefits
 - Sustainable Reuse
 - Measures of Success
- Part II (Optional)
5. Greenspace
 - Authority and Context
 - Community Involvement
 - Site Identification, Site Assessment Plan, Flow of Ownership, and Reuse Planning

Dated: September 20, 2001.

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 01-25016 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00740A; FRL-6806-5]

FIFRA Scientific Advisory Panel; Announcement of Change of Public Meeting Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing a change in the date of a public meeting of the FIFRA Scientific Advisory Panel which was originally published in the *Federal Register* of September 12, 2001. The

meeting, to review the scientific applicability for use of an alternative test guideline for dermal sensitivity, was originally scheduled to be held on October 22, 2001 (the original title for the meeting was regulatory applicability of the local lymph node assay). The meeting date has been changed to December 11, 2001.

DATE: The FIFRA Scientific Advisory Panel meeting will be held on December 11, 2001, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Hotel is (703) 486-1111. Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the originally published notice of September 12, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Designated Federal Official, Office of Science Coordination and Policy (7202), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-5369; fax number: (703) 605-0656; and e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), FIFRA, and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Purpose of this Notice

EPA is announcing a change in the date of a public meeting of the FIFRA Scientific Advisory Panel which was published in the *Federal Register* of September 12, 2001 (66 FR 47478) (FRL-6801-6). The meeting had originally been scheduled to be held on October 22 but has been changed to December 11, 2001.

List of Subjects

Environmental protection.

Dated: October 1, 2001.

Vanessa Vu,

Director, Office of Science Coordination and Policy.

[FR Doc. 01-25018 Filed 10-2-01 2:37 pm]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00795; FRL-6790-2]

Pesticides; Draft Guidance for Pesticide Registrants on Submitting Requests for Threshold of Regulation (TOR) Decisions and Draft Standard Operating Procedures for Making TOR Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of and seeking public comment on a draft Pesticide Registration Notice (PR-Notice) entitled "Guidance for Submitting Requests for Threshold of Regulation (TOR) Decisions." PR-Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular draft PR-Notice provides guidance to the registrant concerning procedures to use when a registrant or other person wants the Agency to determine whether a use of a pesticide in a location and manner that has the possibility of resulting in residues in food qualifies under the Agency's October 27, 1999 "Threshold of Regulation" policy. If EPA concludes a use is below the threshold of regulation, no tolerance or tolerance exemption would be required. The Agency also seeks public comment on draft Standard Operating Procedures for implementing the TOR policy.

DATES: Comments, identified by docket control number OPP-00725, must be received on or before December 4, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit V.A. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-00725 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Vivian Prunier (7506C), Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460; telephone number: (703) 308-9341; fax number: (703) 308-5884; e-mail address: prunier.vivian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are required to register pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), persons who may be interested in ascertaining whether a tolerance or tolerance exemption is required under the Federal Food, Drug and Cosmetic Act (FFDCA) as a condition for FIFRA registration of the use of a pesticide in a location and manner that has the possibility of resulting in residues in food may also be interested in this action. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Guidance Does this PR Notice Provide?

This draft PR-Notice provides guidance to the registrant concerning implementation of the Agency's Threshold of Regulation Policy.

In the **Federal Register** of October 27, 1999 (64 FR 57881) (FRL-6388-2), the EPA announced the availability of a document entitled "Threshold of Regulation Policy - Deciding Whether a Pesticide with a Food Use Pattern Needs a Tolerance." The Threshold of Regulation (TOR) Policy listed criteria and procedures for considering whether a tolerance is required for the use of a pesticide. A use may qualify as a TOR use if:

- a. Using a reliable and appropriately sensitive analytical method to measure residues in the commodity, no residues are detected in the commodity under the expected conditions of use.
- b. Using reasonably protective criteria, the estimated potential risk of any theoretically possible residues in food is not of concern.

The draft PR Notice explains how the Agency will implement the October 1999 TOR policy. The draft PR Notice provides guidance on how to submit a request for a TOR decision and explains how EPA will make TOR decisions in the course of pesticide registration or reregistration. A registrant or other person may submit a request for a TOR decision for a new pesticide use as a part of FIFRA section 3 registration process or for an existing use during

reregistration under FIFRA section 4 or tolerance reassessment under the FFDCA. Before registering a use under FIFRA 24(c), a State may ask EPA to decide whether the use is below the threshold of regulation. A State may request a TOR decision when requesting an emergency exemption under FIFRA section 18.

EPA will follow Standard Operating Procedures (SOPs) for processing TOR requests. You may review and comment on the draft SOP entitled "Implementation of Threshold of Regulation Policy." The Agency is announcing the availability of and a 60-day comment period on the draft SOP in this **Federal Register** notice. The draft Standard Operating Procedures are intended to guide EPA reviewers through the review process for TOR decision requests. The draft SOP explains that EPA's review of a TOR decision request must show that the use is below the threshold of regulation and that the use does not result in risks to humans through exposure to pesticide residues in drinking water or occupation exposures or risks to non-target organisms.

As you review the draft guidance, EPA asks you to consider the following questions:

1. Should EPA initiate a review to see whether a use is below the threshold of regulation? In the October 1999 TOR Policy, EPA stated that it would make TOR eligibility decisions in response to requests from registrants or other persons and on its own initiative. As stated in the 1999 TOR Policy, EPA could consider whether a use of a pesticide on or near food that is described in a petition for a tolerance or exemption is below the threshold of regulation. In tolerance reassessment, EPA could consider whether a use of a pesticide on or near food is below the threshold of regulation. As a matter of practice, however, the Agency plans to confine its activity during tolerance assessment or reassessment to determining whether a tolerance can be established or allowed to remain. EPA believes that the public would not benefit if the Agency routinely used its scarce resources to make a further finding -- that there are no detected residues and that the potential risk from any theoretically present residues in the food is below the threshold of regulation and no tolerance or exemption is necessary. Accordingly, as a general practice, EPA will not conduct TOR eligibility reviews on its own initiative. You may wish to comment on EPA's decision not to initiate such reviews.

2. Do EPA's draft procedures for implementing the TOR policy during

tolerance reassessment enable registrants or other persons to identify a use that may be below the threshold of regulation? The draft PR Notice and the draft SOP explain that registrants or other persons are responsible for initiating a TOR eligibility review. The draft documents reflect EPA's belief that a person who wants a TOR decision is responsible for developing the case to support such a decision. When reviewing the draft procedures, please look for opportunities for early involvement of a registrant or other person in identifying a use that could potentially qualify as a TOR use.

III. Do PR-Notices Contain Binding Requirements?

The PR-Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PR-Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

IV. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain an electronic copy of this **Federal Register** document using the date of publication from the listing of EPA **Federal Register** documents at <http://www.epa.gov/fedrgstr/>. You may obtain an electronic copy of this PR-Notice, as well as other PR-Notices, both final and draft, at <http://www.epa.gov/PR-Notices/>.

B. Fax-on-demand

You may request a faxed copy of the draft Pesticide Registration (PR) Notice entitled "Guidance for Pesticide Registrants on Submitting Requests for Threshold of Regulation (TOR) Decisions," and the draft "Standard Operating Procedure entitled "Implementation of the Threshold of Regulation Policy," by using a faxphone to call (202) 401-0527 and selecting item 6144 and 6145, respectively. You may also follow the automated menu.

C. In person

The Agency has established an official record for this action under docket control number OPP-00725. The official record consists of the documents

specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

V. How Do I Submit Comments?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-00725 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form

must be identified by docket control number OPP-00725. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 21, 2001.

James Jones,
Acting Director, Office of Pesticide Programs.
[FR Doc. 01-25044 Filed 10-4-01; 8:45 am]
BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[PB-402404-TN; FRL-6795-3]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Tennessee Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On January 17, 2001, the State of Tennessee submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of the State of Tennessee application, provides a 45-day public comment period, and provides an opportunity to request a public hearing on the application. Tennessee has provided self-certification of a lead program meeting the requirements for approval under section 404 of TSCA. Therefore, pursuant to section 404, the State program is deemed authorized as of the date of submission. If EPA subsequently finds that the program does not meet the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and the Federal program will be implemented in the State.

DATES: Comments and public hearing requests, identified by docket control number PB-402404-TN, must be received on or before November 19, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB-402404-TN in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Rose Anne Rudd, Pesticides and Toxic Substances Branch; Air, Pesticides and Toxics Management Division, Environmental Protection Agency, Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303; telephone number: (404) 562-8998; e-mail address: rudd.roseanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in the State of Tennessee. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number PB-402404-TN. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays. The docket is located at the regional office library, Sam Nunn Atlanta Federal Center, 9th Floor Tower, 61 Forsyth St., SW., Atlanta, GA. The telephone number for the library is (404) 562-8190.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB-402404-TN in the subject line on the first page of your response.

1. *By mail.* Submit your comments and hearing requests to: Rose Anne Rudd, Pesticides and Toxic Substances Branch, Air, Pesticides and Toxics Management Division, Environmental Protection Agency, Sam Nunn Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303.

2. *In person or by courier.* Deliver your comments and hearing requests to: Pesticides and Toxic Substances Branch, Air, Pesticides and Toxics Management Division, Region IV, Environmental Protection Agency, Sam Nunn Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303. The regional office is open from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The telephone number for the regional office is (404) 562-8956.

3. *Electronically.* You may submit your comments electronically by e-mail to: rudd.roseanne@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PB-402404-TN. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any

information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record.

Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

The State of Tennessee has provided a self-certification letter stating that its lead-based paint training and certification program meets the requirements for authorization of a State program under section 404 of TSCA and has requested approval of the Tennessee lead-based paint training and certification program. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission (i.e., January 17, 2001). If EPA subsequently finds that the program does not meet all the requirements for approval of a State

program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before approving the application. Therefore, by this notice EPA is soliciting public comment on whether the State of Tennessee application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-2692), entitled *Lead Exposure Reduction*.

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 (15 U.S.C. 2684), a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

In the **Federal Register** issue of August 29, 1996 (61 FR 45777) (FRL-5389-9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA (15 U.S.C. 2684(h)), EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized (15 U.S.C. 2684(a)). This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following summary of Tennessee's proposed program has been provided by the applicant. In 1997 the Tennessee State Legislature enacted the Tennessee Lead-Based Paint Abatement Certification Act, Tennessee Code Annotated (T.C.A.) Section 68-131-401, *et seq.*, as amended. This statute designated the Tennessee Department of Environment and Conservation, Division of Solid Waste Management to establish a certification program for lead abatement professionals.

The program requires certification of individuals and firms involved in lead-based paint activities, accreditation of training providers, and standards for the safe removal of lead-based paint. The State lead-based paint program regulations are applicable to all individuals and firms engaged in lead-based paint activities in target housing and child-occupied facilities. Persons who perform lead-based paint abatement activities within residential dwellings that they own and live in are exempt.

The State program provides for the enforcement of the training, certification, and accreditation requirements of the program and the safe removal of lead-based paint. The program provides for compliance with the standards set forth in regulations to protect public health and the environment. Notifications of lead-based paint projects must be submitted to the State at least 15-days prior to the

commencement of a project. The State program monitors compliance in part by conducting unannounced inspections of lead-based paint activities.

IV. Submission to Congress and the Comptroller General

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

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: September 26, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region IV.

[FR Doc. 01-25045 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 25, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by December 4, 2001. 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, 445 12th Street, SW, Room 1-C804, Washington, DC 20554 or via internet to jboley@fcc.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 Control No: 3060-0391.
Title: Program to Monitor the Impacts of the Universal Service Support Mechanisms, CC Docket Nos. 98-202 and 96-45.

Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit.

Number of Respondents: 500.
Estimated Time Per Response: 3.4 hours (avg. per response).
Frequency of Response: Annual reporting requirement.

Cost to Respondent: N/A.
Total Annual Burden: 1,718 hours.
Needs and Uses: The Commission has a program to monitor the impacts of the universal service support mechanisms. The program requires the annual reporting of information regarding network usage and growth by certain companies to the National Exchange Carrier Association (NECA). The information is used by the Commission, Federal-State Joint Boards, Congress, and the general public to assess the impact of the decisions of the Commission and the Joint Boards.

OMB Control No: 3060-0665.
Title: Section 64.707, Public Dissemination of Information by Providers of the Operator Services.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 436.
Estimated Time Per Response: 4 hours (avg. per response).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Cost to Respondent: N/A.
Total Annual Burden: 1,744 hours.
Needs and Uses: As required by 47 U.S.C. Section 226(d)(4)(b), 47 CFR Section 64.707 provides that operator service providers must regularly publish and make available upon request from consumers written materials that describe any changes in operator services and choices available to consumers. Consumers use the information to increase their knowledge of the choices available to them in the operator services marketplace.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 01-24951 Filed 10-4-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 26, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, 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 December 4, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202-418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0053.
Title: Application for Consent to Transfer of Control of Corporation Holding Station License.

Form Number: FCC Form 703.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 40.
Estimated Time Per Response: 36 mins. (0.6 hr.).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 24 hrs.
Total Estimated Cost: \$2,000.

Needs and Uses: The Communications Act of 1934, as amended, and 47 CFR Part 5.59 of FCC Rules require applicants for Experimental Radio Services to submit FCC 703 when they propose to change, as by transfer of stock ownership, the control of a station. This information is used to determine eligibility for licenses, without which, violations of ownership regulations may occur. The FCC has made various revisions to the form: (1) Expiration date was deleted; (2) questions in the fields pertaining to public coast and common carrier Alaska public fixed stations have been removed; (3) fee multiple was deleted; (4) "FOR FCC USE ONLY" field to the right of the "Fee Due" field was removed; (5) fields have been added for the transferee's address and contact information to include an "Attention" field; (6) field labeled "FCC Registration Number (FRN)" was added; (7) Internet URL address was added; (8) references to item numbers have been changed to match the change in the form numbering; (9) instructions pertaining to the use of FCC Forms 159 and 160 have been added; (11) only Experimental Radio Service regular and courier addresses are given; and (12) instructions have been revised to reflect these changes.

OMB Control Number: 3060-0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CC Docket No. 92-60).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 30,000.

Estimated Time Per Response: 31.2 hrs. (avg).

Total Annual Burden: 936,000 hrs.

Total Annual Cost: None.

Frequency of Response:

Recordkeeping; Third party disclosure.

Needs and Uses: 47 CFR parts 64 and 68 contain procedures for avoiding unwanted telephone solicitation to residences and for regulating the use of automatic telephone dialing systems, artificial or prerecorded voice messages, and telephone facsimile machines. The rules prohibit prerecorded message calls to residences absent an emergency or the prior express consent of the called party. Telephone solicitors must maintain and use company-specific lists of residential subscribers who request not to receive further telephone calls (company-specific "do-not-call" lists). Moreover, telephone solicitors must have a written policy for maintaining do-not-call lists, are responsible for informing and training their personnel to use these lists, must identify themselves to called parties, and have basic identifying information included in telephone facsimile transmissions.

OMB Control Number: 3060-0653.

Title: Consumer Information—Posting by Aggregators, Sections 64.703(b) and (c).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 56,200.

Estimated Time Per Response: 3.7 hrs. (avg).

Total Annual Burden: 206,566 hrs.

Total Annual Costs: None.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Needs and Uses: As required by 47 U.S.C. Section 226(c)(1)(A), 47 CFR Section 64.703(b) provides that aggregators (providers of telephone to the public or transient users) must post in writing, on or near such phones, information about presubscribed operator services, rates, carrier access, and the FCC address to which consumers may direct complaints. Section 64.703(c) establishes a 30-day outer limit for updating the posted

consumer information when an aggregator has changed the presubscribed operator service provider. Consumers can use this information to determine whether they wish to use the services of the identified operator service provider.

OMB Control Number: 3060-0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,750.

Estimated Time Per Response: 94.63 hrs. (avg).

Total Annual Burden: 165,600 hrs.

Total Annual Costs: None.

Frequency of Response:

Recordkeeping; On occasion and annual reporting requirements; Third party Disclosure.

Needs and Uses: In the Fourth Report and Order, CC Docket No. 98-147, the FCC requires a certification of interstate traffic from certain collocating carriers and the provision of a detailed description of available collocation space from incumbent local exchange carriers in certain circumstances. The requirements implement Section 706 of the Communications Act of 1934, as amended, to promote deployment of advanced services without significantly degrading the performance of other services.

OMB Control Number: 3060-0823.

Title: Pay Telephone Reclassification Memorandum Opinion and Order, CC Docket No. 96-128.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities

Number of Respondents: 400.

Estimated Time Per Response: 111.75 hrs. (avg).

Total Annual Burden: 44,700 hrs.

Total Annual Cost: \$480,000.

Frequency of Response:

Recordkeeping; On occasion; Quarterly; Monthly; Annually; and One-time reporting requirements; Third Party Disclosure.

Needs and Uses: In the Memorandum Opinion and Order (MO&O) issued in CC Docket No. 96-128, the Common Carrier Bureau clarified requirements established in the Payphone Orders for the provision of payphone-specific coding digits by local exchange carriers (LECs) and payphone service providers (PSPs) to interexchange carriers (IXCs).

The MO&O clarified that only FLEX ANI complies with the requirements; required that LECs file tariffs to reflect FLEX ANI as a nonchargeable option to IXCs; required that LECs file tariffs to recover costs associated with implementing FLEX ANI; required that LEC provide IXCs information on payphones that provide payphone-specific coding digits for smart and dumb payphones; required that LECs provide IXCs and PSPs information on where FLEX ANI is available now and when it is to be scheduled in the future; and granted permission and certain waivers. The information disclosure rules and policies governing the payphone industry implement section 276 of the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01-24958 Filed 10-4-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the second meeting and of future meetings of the Technological Advisory Council ("Council") under its new charter.

DATES: Monday, November 5, 2001 at 10 a.m.; Wednesday, December 5, 2001 at 10 a.m.; Wednesday, March 20, 2002 at 10 a.m.; Wednesday, June 12, 2002 at 10 a.m.; Wednesday, September 18, 2002 at 10 a.m.; and Tuesday, December 4, 2002 at 10 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Room TW-C305, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, etc., can provide advice to the FCC on innovation in the communications industry. The purpose of, and agenda for, the second meeting under the Council's new charter will be to organize the Council's efforts to fulfill its responsibilities under the charter. Members of the general public may attend the meeting. The Federal Communications Commission will

attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Julius Knapp, the Council's Designated Federal Officer, before the meeting. Julius Knapp's e-mail address is jknapp@fcc.gov. His U.S. mail address is Julius Knapp, Deputy Chief, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. Further meetings of the Council have been scheduled for December 5, 2001; March 20, 2002; June 12, 2002; September 18, 2002; and December 4, 2002. These meetings will address the topics that the Council has been asked to consider by the Commission. All meetings will be held in the Commission meeting room, Room TW-C-305, 445 12th Street, SW., Washington, DC. Each meeting will begin at 10 a.m. and continue until the business before the Council on that date has been completed. For additional information, contact Kent Nilsson at knilsson@fcc.gov or 202-418-0845.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 01-24957 Filed 10-4-01; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than October 19, 2001.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *John W. Brown and Flora M. Brown*, Drayton, North Dakota; to acquire voting shares of Drayton Bancor, Inc., Drayton, North Dakota, and thereby indirectly acquire voting shares of Drayton State Bank, Drayton, North Dakota.

Board of Governors of the Federal Reserve System, October 1, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01-25009 Filed 10-4-01; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Energy Employees Occupational Illness Compensation Program Act of 2000 and Executive Order 13179; Delegation of Authority

Notice is hereby given that I have delegated to the Director, Centers for Disease Control and Prevention, with authority to redelegate, the following authorities vested in the Secretary of Health and Human Services, under the Energy Employees Occupational Illness Compensation Program Act of 2000 (Pub. L. 106-398), and Executive Order 13179, Section 2(b), as amended hereafter, insofar as these authorities pertain to the functions assigned to the Centers for Disease Control and Prevention:

(iii) With assistance of the Department of Energy (DOE), apply methods promulgated to estimate the radiation doses received by individuals applying for assistance.

(iv) Upon request from the Secretary, DOE, appoint members for a physician panel or panels to consider individual workers' compensation claims as part of the DOE Worker Assistance Program.

(v) Provide the Advisory Board on Radiation and Worker Health established pursuant to Pub. L. 106-398 with administrative services, funds, facilities, staff, and other necessary support services, and perform the administrative functions of the President under the Federal Advisory Committee Act with respect to the Advisory Board.

This delegation excludes the authority to promulgate regulations under this legislation.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control and Prevention, or his subordinates which involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: September 28, 2001.

Tommy G. Thompson,
Secretary.

[FR Doc. 01-24996 Filed 10-4-01; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY-53-01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Factors and Strategies that are Effective in Establishing Policy and Environmental Interventions Designed to Promote Good Nutrition and Physical Activity—New—The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC), proposes to conduct a study to determine what is needed to implement and sustain policy and environmental interventions to promote physical activity and good nutrition for cardiovascular health. Policy and environmental intervention approaches to promoting physical activity and good nutrition are a new paradigm shift for intervention activities, therefore, research is required to determine what is needed to implement and sustain these types of interventions.

The proposed study will be conducted in three phases. *Phase 1 Background Information:* A review will be conducted of the literature of national conferences to identify experts

in the field of policy and environmental interventions to promote physical activity and good nutrition. *Phase 2 Expert Interviews:* State representatives, recognized experts, and others will be contacted via telephone to gather detailed information on both successful and promising environmental and

policy interventions. *Phase 3 Key Informant Interviews:* Key informant interviews will be conducted with selected interventions and programs that were indicated in Phases 1 and 2 to identify activities, methods, and lessons learned for their successful implementation. We will summarize

and evaluate interview results and disseminate to cardiovascular health funded States to assist in designing policy and environmental interventions to promote physical activity and good nutrition. Total annualized burden for this data collection is 22.5 hours.

Respondents	No. of respondents	No. of re-sponses/re-spondent	Average burden per response (in hours)
Expert Interviews	40	1	15/60
Key Informant Interviews	25	1	30/60

Dated: September 28, 2001.
Nancy E. Cheal,
Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.
 [FR Doc. 01-25072 Filed 10-4-01; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY-52-01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written

comments should be received within 30 days of this notice.

Proposed Project: 2002 National Health Interview Survey Basic Module—Revision—OMB. No. 0920-0214, National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. In accordance with the 1995 initiative to increase the integration of surveys within the Department of Health and Human Services, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey. This survey is conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated "Health US" and related publications, as well as the single most important source of statistics to track progress

toward the National Health Promotion and Disease Prevention Objectives, "Healthy People 2010."

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were partially implemented in 1996 and fully implemented in 1997. This clearance is for the sixth full year of data collection using the Basic Module on CAPI and for the implementation of Topical Modules (or supplements) on asthma, hearing, vision, disability, environmental health, arthritis, and alternative medicine. The supplements will help track many of the Health People 2010 objectives. This data collection, planned for January-December 2002, will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. The annualized burden for this data collection is 48,600 hours.

Respondents	Number of respondents	Number of re-sponses/re-spondent	Avg. burden per response (in hours)
Family	42,000	1	21/60
Sample adult	42,000	1	42/60
Sample child	18,000	1	15/60

Dated: September 28, 2001.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01-25073 Filed 10-4-01; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY-50-01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Human Exposure to Cyanobacterial (blue-green algal) Toxins in Drinking Water: Risk of Exposure to Microcystins from Public Water Systems—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Cyanobacteria (blue-green algae) can be found in terrestrial, fresh, brackish, or marine water environments. Some species of cyanobacteria produce toxins that may cause acute or chronic illnesses (including neurotoxicity, hepatotoxicity, and skin irritation) in humans and animals (including other mammals, fish, and birds). A number of human health effects, including gastroenteritis, respiratory effects, skin irritations, allergic responses, and liver damage, are associated with the ingestion of or contact with water containing cyanobacterial blooms. Although the balance of evidence, in conjunction with data from laboratory animal research, suggests that cyanobacterial toxins are responsible for a range of human health effects, there have been few epidemiologic studies of this association. We plan to recruit 100 people whose tap water comes from a source with a current cyanobacteria bloom (*i.e.*, *M. aeruginosa*) and who report drinking unfiltered tap water. We

also plan to recruit 100 people who report drinking unfiltered tap water but whose tap water source is groundwater that has not been contaminated with cyanobacteria. This population will serve as our referent population for the analysis of microcystins in blood and for the clinical assays. We will administer a questionnaire and collect blood samples from all study participants. Blood samples will be analyzed using a newly developed molecular assay for levels of microcystins—the hepatotoxin produced by *Micocystis aeruginosa*. We also will analyze blood samples for levels of liver enzymes (a biological marker of hepatotoxicity) and for a number of clinical parameters including hepatitis infection (a potential confounder in our study). We will evaluate whether we can (1) detect low levels of microcystins (<10 ng/ml of blood), in the blood of people who are exposed to very low levels of this toxin in their drinking water, (2) utilize clinical endpoints such as blood liver enzyme levels as biomarkers of exposure and biological effect, and (3) compare the analytical results for the exposed population with the results from the referent population. The estimated annualized burden is 350 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Telephone Contact	300	1	10/60
Survey	200	1	1
Tap Water Sample Collection	200	1	30/60

Dated: September 28, 2001.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01-25074 Filed 10-4-01; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

ICD-9-CM Coordination and Maintenance Committee Meeting

National Center for Health Statistics (NCHS), Data Policy and Standards Staff, announces the following meeting.

Name: ICD-9-CM Coordination and Maintenance Committee meeting.

Times and Dates: 9 a.m.-5 p.m., November 1-2, 2001.

Place: Centers for Medicare and Medicaid Services (CMS)(formerly The Health Care Financing Administration) Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public.

Purpose: The ICD-9-CM Coordination and Maintenance (C&M) Committee will hold its final meeting of the 2001 calendar year cycle on Thursday and Friday Nov. 1-2, 2001. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters To Be Discussed: Agenda items include:

- Discussion on use of V codes for procedures
- Heart failure
- Aftercare codes
- Vascular disease
- Facial droop following CVA
- Ectopic pregnancy with uterine pregnancy
- Pulmonary complications of cystic fibrosis
- Asthma
- Severe sepsis
- West Nile Virus
- Paint ball injury
- Abnormal pap smear

ICD-10-PCS Update

- Implantation of intramuscular electrodes
- Brain wafer chemotherapy
- Cardiac resynchronization therapy
- Implantation of neosphincter
- Spinal procedures-360 fusion, Interbody Fusion Devices, InFUSE bone grafts
- Repair of Aneurysm/Arteriovenous malformation
- Hepatic hemodialysis
- Therapeutic ultrasound
- Infusion of Drotrecogin Alfa (Activated)
- Adhesion barriers for abdominal surgery
- Extra-corporeal immunoadsorption (ECI)
- Intraoperative MRI
- Administration of inhaled nitric oxide
- Drug-Eluting stent
- Injection or infusion of Human B-type natriuretic peptide (hBNP)
- Addenda

For Further Information Contact: Amy Blum, Medical Classification Specialist, Data Policy and Standards Staff, NCHS, 6526 Belcrest Road, Room 1100, Hyattsville, Maryland 20782, telephone 301/458-4106 (diagnosis), Amy Gruber, Health Insurance Specialist, Division of Acute Care, CMS, 7500

Security Blvd., Room C4-07-07, Baltimore, Maryland, 21244 telephone 410-786-1542 (procedures).

Notice: In the interest of security, (CMS) has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Notice: This is a public meeting. However, because of fire code requirements, should the number of attendants meet the capacity of the room the meeting will be closed.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 1, 2001.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01-25050 Filed 10-4-01; 8:45 am]

BILLING CODE 4160-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Mine Safety and Health Research Advisory Committee (MSHRAC).

Time and Date: 9 a.m.-4 p.m., November 1, 2001.

Place: National Institute for Occupational Safety and Health (NIOSH), 626 Cochrans Mill Road, Building 140, Pittsburgh, Pennsylvania 15236, telephone 412/386-6602.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), section 102(b)(2).

Matters To Be Discussed: Agenda for this meeting will focus on NIOSH updates and overviews from various regional offices, international and stakeholder collaboration, and alternate fuels for mining systems.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Lewis V. Wade, Ph.D., Executive Secretary,

MSHRAC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715-H, Hubert Humphrey Building, P12 Washington, DC 20201-0004, telephone 202/401-2192, fax 202/260-4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 1, 2001.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01-25049 Filed 10-4-01; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N-0402]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Third-Party Premarket Submission Review and Quality System Inspections Under United States/European Community Mutual Recognition Agreement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for medical devices; third-party premarket submission review and quality system inspections under United States/European Community (U.S./EC) Mutual Recognition Agreement (MRA).

DATES: Submit written or electronic comments on the collection of information by December 4, 2001.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm>. Submit written comments on the collection of

information to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Peggy Schlosburg, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Third-Party Premarket Submission Review and Quality System Inspections Under U.S./EC Mutual Recognition Agreement (OMB Control No. 0910-0378)—Extension

The third-party program under the U.S./EC MRA is intended to implement that part of the U.S./EC MRA that covers the exchange of quality system evaluation reports for all medical

devices and premarket evaluation reports for selected low-to-moderate risk devices. Under the MRA, firms may apply to become designated as a U.S. Conformity Assessment Body (CAB). Firms who are designated will be qualified to conduct quality system evaluations for all classes of devices and product type examinations and verifications for selected devices based on EC requirements under the voluntary third-party program authorized by MRA. Firms designated as European Union (EU) CABs could conduct quality system evaluations for all classes of devices and premarket 510(k) evaluations for selected devices based on FDA requirements. Under the voluntary third-party program, reports of these evaluations would be submitted by the EU CABs to FDA. The EU CABs would also be required to maintain copies of their evaluation reports.

FDA requests approval of the following collection of information:

Requests for Designation as U.S. CABs—Under this program, U.S.

companies were allowed to apply for designation as a U.S. CAB. Such designation enabled the company to perform third-party reviews of U.S. products for export to the EU and third-party audits of quality systems established by manufacturers of medical devices manufactured for export to the EU. Third-party review of U.S. products for export and third-party audit of quality systems was elective and at the discretion of the manufacturer of the product. At the present time, only eight U.S. CABs are active. The agency is not accepting applications for U.S. CAB designation at this time and in the foreseeable future.

Premarket Reports by EU CABs—Under this program, EU CABs will be able to perform third-party evaluations for certain products manufactured in Europe for export to the United States. Third-party evaluation is elective and at the discretion of the manufacturer of the product.

Quality System Reports by EU CABs—Under this program, EU CABs will be

able to perform third-party audits of the quality systems established by EU manufacturers of products manufactured for export to the United States. Third-party audit of quality systems is elective and at the discretion of the manufacturer of the product.

EU CABs must maintain records of their third-party evaluations of quality systems and premarket submissions for certain products manufactured for export to the United States for a period of no less than 3 years.

The program implements that part of the U.S./EC MRA that covers the exchange of quality system evaluation reports for all medical devices and premarket evaluation reports for selected low-to-moderate risk devices.

Respondents to this information collection are businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

ITEM	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Premarket Reports by EC CABs	11	5	55	40	2,200
Quality System Reports by EC CABs	11	15	165	32	5,280
Totals					7,480

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

ITEM	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Premarket Reports by EC CABs	11	5	55	10	550
Quality System Reports by EC CABs	11	15	165	10	1,650
Totals					2,200

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The following is an explanation of the burden estimate.

I. Reporting Burden

A. Requests for Designation as U.S. CAB

U.S. firms who have applied and have been accepted for designation as a U.S. CAB will be able to perform third-party evaluations of U.S. products for export to the EU. Likewise, European firms who have applied and been designated as EC CABs, will be able to perform

third-party reviews of products to be exported to the United States. The application for nomination as an EU CAB does not represent a paperwork burden subject to the PRA because the designation procedure is an internal process that is required by, and administered by, European authorities. Only the application for designation as a U.S. CAB represents a paperwork burden under the PRA. However, the agency has received 10 applications for

designation as U.S. CABs, 8 of whom are still active. The agency is not accepting any applications at this time, and does not anticipate accepting any applications in the near future. Thus burden for U.S. CAB designation is nonexistent at this time.

B. Premarket Reports

EU CABs are required to submit to FDA reports of their third-party evaluations. Based upon information gathered during the negotiation of the

U.S./EC MRA, the agency anticipates that European manufacturers will request third-party review for approximately 55 to 100 medical device products annually. The agency expects that interest and participation in the program will increase with time. The agency further estimates based on dialogue with EC officials, that 11 firms will be designated to act as EC CABs.

C. Quality System Reports

EU CABs are required to submit to FDA reports of their third-party evaluations. Based upon information gathered during the negotiation of the U.S./EC MRA, the agency anticipates that European manufacturers will request third-party audits for approximately 165 medical device products annually. The agency estimates that 11 EU CABs will perform these evaluations.

II. Recordkeeping

FDA requires the reviewers to keep in their records a copy of the report that they submit to FDA for each review. The agency anticipates that 55 premarket reports and 165 quality system reports will be generated and required to be maintained by EU CABs annually. The agency further estimates that each reviewer will require no more than 10 hours (2 hours per recordkeeping per report) for each to maintain such records annually.

Dated: September 27, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01-24998 Filed 10-4-01; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 16, 2001, from 8:30 a.m. to 5 p.m.

Location: Hilton Washington DC North, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact: Thomas H. Perez, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-6758, e-mail: PerezT@cder.fda.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will consider the safety and efficacy of Activated Protein C (human, recombinant, human kidney cells, new biologic license application (BLA) 125029), Eli Lilly & Co., for the treatment of severe sepsis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 9, 2001. Oral presentations from the public will be scheduled on October 16, 2001, between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 9, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the October 16, 2001, Anti-Infective Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Anti-Infective Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 1, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01-25107 Filed 10-2-01; 5:03 pm]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Nonclinical Studies Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonclinical Studies Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 13, 2001, from 8 a.m. to 12:15 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee conference room 1066, 5630 Fishers Lane, Rockville, MD.

Contact: Kimberly Topper, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-7001, e-mail: TopperK@cder.fda.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss the activities of the two expert working groups requested by this subcommittee: The working group on biomarkers of cardiac tissue injury and the working group on biomarkers of vasculitis (vascular damage). Representatives from each working group will report their progress and plans, and the subcommittee will discuss these activities and provide feedback to the working groups. Administrative oversight of the subcommittee will be discussed, including the possibility of integration with the Scientific Advisory Board of the FDA National Center for Toxicological Research.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 6, 2001. Oral

presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 6, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 28, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01-24997 Filed 10-4-01; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D-1562]

Guidance for Industry on Cancer Drug and Biological Products—Clinical Data in Marketing Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Cancer Drug and Biological Products—Clinical Data in Marketing Applications." This guidance provides recommendations for sponsors designing clinical trials to demonstrate the safety and efficacy of cancer treatments on the collection of data that can be submitted to support marketing claims in new drug applications (NDAs), biologics license applications (BLAs), or applications for supplemental indications.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communications, Training, and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send one

self-addressed adhesive label to assist the office in processing your requests. A faxed copy of this guidance can also be obtained by calling the FAX Information System at 1-888-CBER-FAX or 301-827-3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

Submit written comments on the document to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecommments>.

FOR FURTHER INFORMATION CONTACT:

Grant A. Williams, Center for Drug Evaluation and Research (HFD-150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5740, or

Patricia Keegan, Center for Biologics Evaluation and Research (HFM-573), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-5093.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Cancer Drug and Biological Products—Clinical Data in Marketing Applications." This guidance provides general principles for data collection and submission for sponsors of investigational new drug applications, NDAs, BLAs, or supplemental applications for new indications. The guidance is intended to enable sponsors to more effectively create plans to record and report the data from controlled trials that form the clinical basis for approval of anticancer drug and biological products.

In the *Federal Register* of November 9, 2000 (65 FR 67389), FDA announced the availability of a draft version of this guidance. After FDA considered public comments on the draft guidance, the agency determined that revision of the draft guidance was necessary. The final guidance notes that tumor images usually are not submitted as part of the marketing application, but this should be clarified at presubmission meetings with FDA. The final guidance also states that information on drug dosing should be collected from all patients rather than from a sample of patients, as suggested in the draft guidance. Collecting dosing information in all patients allows a full assessment of the adequacy of dosing in both the investigational arm and the control arm of the submitted studies.

This level 1 guidance is being issued consistent with FDA's good guidance

practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on clinical data in marketing applications for cancer drug or biologic products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments on the guidance to the Dockets Management Branch (address above). Two copies of written mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/cder/guidance/index.htm>, <http://www.fda.gov/cber/guidelines.htm>, or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: September 28, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01-24946 Filed 10-4-01; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D-1169]

Guidance for Industry on Content and Format for Geriatric Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Content and Format for Geriatric Labeling." FDA established the "Geriatric use" subsection in the labeling for human prescription drug and biological products to provide pertinent information about the appropriate use of drugs in the elderly (persons aged 65 and over). This guidance is intended to provide industry with information on submitting

geriatric labeling for human prescription drug and biological products, including who should submit revised labeling, the implementation schedule, a description of the regulation and optional standard language in the proposed labeling, the content and format for geriatric labeling supplements, and the applicability of user fees to geriatric labeling supplements.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Drug Information Branch (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Mary E. Ortuzar, Center for Drug Evaluation and Research (HFD-006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-6740; or Toni Stifano, Center for Biologics Evaluation and Research (HFM-600), 1401 Rockville Pike, Rockville, MD 20852, 301-827-6190.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Content and Format for Geriatric Labeling." This guidance has been developed in response to a final rule that published in the *Federal Register* of August 27, 1997 (62 FR 45313), establishing, in the "Precautions" section of prescription drug labeling, a subsection on the use of drugs in elderly or geriatric patients (aged 65 years or over) (§ 201.57(f)(10) (21 CFR 201.57(f)(10))). A draft guidance by the same name was made available for comment by a notice published in the *Federal Register* of January 21, 1999 (64

FR 3302). This guidance incorporates minor revisions based on comments the agency received on the draft guidance. The final guidance makes clear that the application holder is responsible for submitting a supplement to request the omission of the "Geriatric use" subsection or to request an alternative statement and for providing the reasons supporting the request.

The geriatric labeling regulation recognizes the special concerns associated with the geriatric use of prescription drugs and acknowledges the need to communicate important information so that drugs can be used safely and effectively in older patients. The medical community has become increasingly aware that prescription drugs can produce effects in the elderly that are significantly different from those produced in younger patients. Geriatric labeling information is of increasing importance because of the growing proportion of the population that is over 65 years of age and the significant use of medications by this age group.

This guidance discusses which application holders are responsible for submitting revised labeling and summarizes the implementation schedule for submitting geriatric labeling. The geriatric labeling regulation includes six paragraphs (§ 201.57(f)(10)(i) through (f)(10)(vi)) that outline various options for statements in the "Geriatric use" subsection, based on the type of information available and the interpretation of that information. The guidance summarizes the requirements of § 201.57(f)(10)(i) through (f)(10)(vi) and provides detailed guidance on the submission of this information. In addition, the content and format for geriatric labeling supplements, as well as the applicability of user fees to geriatric labeling supplements, are discussed in detail in the guidance document.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the content and format of geriatric labeling. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments on the guidance to the Dockets Management Branch (address above).

Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/cder/guidance/index.htm> or <http://www.fda.gov/cber/guidelines.htm>.

Dated: September 28, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01-24945 Filed 10-4-01; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage In Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is also available on the internet at the following websites: <http://workplace.samhsa.gov>; <http://www.drugfreeworkplace.gov>; and <http://www.health.org/workplace>.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl,

Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443-6014, Fax: (301) 443-3031.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

- ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414-328-7840/800-877-7016 (Formerly: Bayshore Clinical Laboratory)
- ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 716-429-2264
- Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901-794-5770/888-290-1150
- Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615-255-2400
- Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513-585-9000 (Formerly: Jewish Hospital of Cincinnati, Inc.)
- American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703-802-6900
- Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119-5412, 702-733-7866/800-433-2750
- Baptist Medical Center—Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-202-2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)
- Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860-696-8115 (Formerly: Hartford Hospital Toxicology Laboratory)
- Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215-2802, 800-445-6917
- Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800-876-3652/417-269-3093 (Formerly: Cox Medical Centers)
- Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38-H, P.O. Box 88-6819, Great Lakes, IL 60088-6819, 847-688-2045/847-688-4171
- Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941-561-8200/800-735-5416
- Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912-244-4468
- DrugProof, Division of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888-777-9497/334-241-0522 (Formerly: Alabama Reference Laboratories, Inc.)
- DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672/800-898-0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
- DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215-674-9310
- Dynacare Kasper Medical Laboratories,¹ 14940-123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780-451-3702/800-661-9876
- ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662-236-2609
- Express Analytical Labs, 1301 18th Ave., NW., Suite 110, Austin, MN 55912, 507-437-7322
- Gamma-Dynacare Medical Laboratories,¹ A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519-679-1630
- General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608-267-6267
- Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504-361-8989/800-433-3823 (Formerly: Laboratory Specialists, Inc.)
- LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913-888-3927/800-728-4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
- Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713-856-8288/800-800-2387
- Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908-526-2400/800-437-4986 (Formerly: Roche Biomedical Laboratories, Inc.)
- Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919-572-6900/800-833-3984 (Formerly: LabCorp Occupational Testing Services, Inc.; CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
- Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800-882-7272 (Formerly: Poisonlab, Inc.)
- Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866-827-8042/800-233-6339 (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)
- Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715-389-3734/800-331-3734
- MAXXAM Analytics Inc.,¹ 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905-890-2555 (Formerly: NOVAMANN (Ontario) Inc.)
- Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419-383-5213
- MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651-636-7466/800-832-3244
- MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503-413-5295/800-950-5295
- Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612-725-2088
- National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661-322-4250/800-350-3515
- Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801-293-2300/800-322-3361 (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)
- One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713-920-2559 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
- Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440-0972, 541-687-2134
- Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818-598-3110/800-328-6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)
- Pathology Associates Medical Laboratories, 11604 E. Indiana Ave., Spokane, WA 99206, 509-926-2400/800-541-7891
- PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817-215-8800 (Formerly: Harris Medical Laboratory)
- Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913-339-0372/800-821-3627
- Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770-452-1590 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
- Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 248-373-9120/800-444-0106 (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
- Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800-842-6152 (Moved from the Dallas location on Q3/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
- Quest Diagnostics Incorporated, 801 East Dixie Ave., Suite 105A, Leesburg, FL 34748, 352-787-9006 x4343 (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
- Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610-631-4600/

877-642-2216 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800-669-6995/847-885-2010 (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108-4406, 619-686-3200/800-446-4728 (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201-393-5590 (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818-989-2520/800-877-2520 (Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804-378-9130

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505-727-6300/800-999-5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219-234-4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602-438-8507/800-279-0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517-377-0520 (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405-272-7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573-882-1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305-593-2260

Universal Toxicology Laboratories (Florida), LLC, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954-717-0300, 800-522-0232 x419 (Formerly: Integrated Regional Laboratories, Cedars Medical Center, Department of Pathology)

University Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915-561-8851/888-953-8851

US Army Forensic Toxicology Drug Testing Laboratory, Fort Meade, Building 2490 Wilson Street, Fort George G. Meade, MD 20755-5235, 301-677-7085

¹ The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing

plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection process. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (Federal Register, July 16, 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 FR, June 9, 1994, Pages 29908-29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,
Executive Office, Substance Abuse and Mental Health Services Administration.
[FR Doc. 01-25051 Filed 10-4-01; 8:45 am]
BILLING CODE 4160-20-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4644-N-40]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: October 5, 2001.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no

additional properties have been determined suitable or unsuitable for this week.

Dated: September 27, 2001.
John D. Garrity,
Director, Office of Special Needs Assistance Programs.

[FR Doc. 01-24656 Filed 10-4-01; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of the Draft Environmental Impact Statement/ Environmental Impact Report for the Proposed Teayawa Energy Center, Riverside County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to file a draft Environmental Impact Statement /Environmental Impact Report (DEIS/EIR) for the proposed Teayawa Energy Center to be constructed and operated on 41.5 acres of the Torres Martinez Indian Reservation in Riverside County, California. The purpose of the proposed project is to conjointly help provide for the economic development and progress of the Torres Martinez Desert Cahuilla Indians and for the power needs of southern California. Details on the project location, proposed action and areas of environmental concern are addressed in the DEIS/EIR provided in the **SUPPLEMENTARY INFORMATION** section. This notice also announces a public hearing to receive comments on the DEIS/EIR.

DATES: Written comments on the DEIS/EIR must arrive by December 3, 2001. The public hearing will be held on Thursday, October 25, 2001, from 7 p.m. to 10 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Ronald Jaeger, Regional Director, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825-1846. Please include your name, return address and the caption, "DEIS/EIR Comments, Teayawa Energy Center, Riverside County, California," on the first page of your written comments.

The public hearing will be held at the Tribal Hall, Torres Martinez Indian Reservation, 66725 Martinez Road, Thermal, California. This hearing will be co-hosted by the BIA and the Torres Martinez Indians.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the DEIS/EIR, please write or call William Allan, Environmental Protection Specialist, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825-1846, telephone (916) 978-6043. Copies of the DEIS/EIR are also available for public review in the Torres Martinez Tribal Administrative Headquarters at the Thermal, California, address given above and at public libraries throughout the Coachella Valley, California.

SUPPLEMENTARY INFORMATION: Calpine Corporation, through an agreement with the Torres Martinez Desert Cahuilla Indians, proposes to construct, own and operate the Teayawa Energy Center (TEC), a 600 megawatt, natural-gas-fired power plant to be located on a 41.5 acre parcel of tribal trust land in Riverside County, California. The parcel is located along 62nd Avenue, east of Johnson Street near the Coachella Canal, northeast of the town of Mecca, California.

Natural gas would be supplied to TEC through a new gas pipeline connection to the nearest, Southern California Gas Company intrastate pipeline. The preferred route for this connecting pipeline is north from the proposed TEC site along an existing utility corridor, to an interconnection point on the intrastate line located north of the Interstate 10 freeway.

To provide cooling for TEC, approximately 4000 acre-feet per year of process water would be needed. The preferred source for this water is via connection to the Coachella branch of the All American Canal (Coachella Canal). TEC would use a "zero liquid discharge" system for treatment of process wastewater, including cooling tower blowdown. Water cycled in a cooling tower is concentrated into a sludge-like consistency and evaporated from onsite ponds. The resulting mineral concentration that builds up in the ponds would be stored, dried and eventually hauled off site for disposal at an appropriate landfill.

Potable water would be supplied to TEC by a groundwater well on site. This would also provide a backup source of cooling water when canal water is unavailable. Sanitary waste would be collected in a storage tank and periodically trucked to an offsite treatment plant, or disposed using a septic tank and leach field, if soil conditions permit.

Electricity produced by TEC would be transformed up to transmission level voltage at an onsite switch yard that would be connected to the double

circuit, 230-kilovolt (kV) transmission lines owned by the Imperial Irrigation District (IID). These existing transmission lines are located immediately east of the proposed TEC site, on the eastern edge of the Coachella Canal. To mitigate potential, localized transmission system congestion and reliability problems, TEC would include a new electrical transmission line segment to an IID substation in the city of Coachella, California. In addition, re-conductoring and related improvements will be made to existing offsite transmission lines owned by IID and Southern California Edison (SCE) and situated between the Coachella substation and the SCE grid.

Alternatives to the proposed project that are considered in the DEIS/EIR include alternative natural gas pipeline routes, alternative water sources, a smaller energy center and no action (no project). Resources and issues discussed in the DEIS/EIR include water, biological, agricultural, mineral, paleontological, cultural and visual resources, geology and soils, land use, air quality, noise, traffic and transportation, public health/environmental hazards, worker safety, hazardous materials, hazardous waste handling, public services and utilities, socioeconomic, environmental justice and Indian trust assets.

Public Comment Solicitation

As an alternative to submitting written comments regarding the content of the DEIS/EIR to the location identified in the **ADDRESSES** section, interested persons may instead comment via the Internet to <http://www.billallan@bia.gov>. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include your name, return address and the caption, "DEIS/EIR Comments, Teayawa Energy Center, Riverside County, California," on the first page of your Internet message. If you do not receive confirmation from the system that your Internet message was received, contact William Allan at (916) 978-6043.

Comments, including names and home addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be

honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1-6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: September 27, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01-24982 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123-2394, or by calling 1-800-200-GULF.

SUPPLEMENTARY INFORMATION: MMS prepares an EA and FONSI for proposals

that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA examines the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes

major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which a FONSI was prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Kerr-McGee Oil & Gas Corporation, Development Operations, SEA No. N-07077.	East Breaks Area; Blocks 642, 643, 688 and 732; Leases OCS-G 09183, 09184, 09191 and 09194; 114 to 120 miles off the Texas Coast.	08/01/01
Chevron, U.S.A., Inc., Development Operations and Pipeline Activity, SEA Nos. S-05631, P-13389, P-13390, P-13391, P-13392.	Viosca Knoll Area, Blocks 340 and 251, Lease OCS-G 10933 and 10930, 30 to 38 miles south of Mobile County, Alabama.	08/01/01
Newfield Exploration Company, Structure Removal Activity, SEA No. ES/SR 01-059.	Ship Shoal Area, Block 145, Lease OCS-G 01014, 25 miles south-southwest of Terrebonne Parish, Louisiana, and 99 miles southeast of Intracoastal City, Louisiana.	07/18/01
Newfield Exploration Company, Structure Removal Activity, SEA No. ES/SR 01-060.	South Timbalier Area, Block 148, Lease OCS-G 1898, 132 miles southeast of Intracoastal City, Louisiana, and 31 miles south of Lafourche Parish, Louisiana.	08/10/01
BP America, Inc., Structure Removal Activity, SEA No. ES/SR 01-061.	South Timbalier Area, Block 161, Lease OCS G 01248, 32 miles south of Terrebonne Parish, Louisiana, and 53 miles southwest of Grand Isle, Louisiana.	07/27/01
BP America, Inc., Structure Removal Activity, SEA No. ES/SR 01-062.	Matagorda Island Area, Block 636, Lease OCS-G 13768, 16 miles southeast of Calhoun County, Texas, and 46 miles east-northeast of Harbor Island, Texas.	07/27/01
Walter Oil & Gas Corporation, Structure Removal Activity, SEA No. ES/SR 01-063.	Main Pass Area, Block 245, Lease OCS-G 14584, 71 miles east of Venice, Louisiana, and 49 miles southeast of Chandeleur Islands, Louisiana.	07/30/01
Phillips Petroleum Company, Structure Removal Activity, SEA No. ES/SR 01-064.	West Cameron Area, Block 116, Lease OCS-G 15058, 19 miles south of Cameron Parish, Louisiana, and 85 miles west southwest of Intracoastal City, Louisiana.	07/27/01
Barrett Resources Corporation, Structure Removal Activity, SEA No. ES/SR 01-065.	Brazos Area, Block 437, Lease OCS-G 04140, 11 miles southeast of Matagorda County, Texas, and 35 miles southwest of Freeport, Texas.	08/09/01
El Paso, Structure Removal Activity, SEA No. ES/SR 01-066.	Eugene Island Area, Block 216, Lease OCS-G 14470, 47 miles south-southeast of Terrebonne Parish, Louisiana, and 134 southeast of Cameron, Louisiana.	08/09/01
Shell Offshore, Inc., Structure Removal Activity, SEA No. ES/SR 01-067.	West Cameron Area, Block 270, Lease OCS-G 15073, 63 miles south-southeast of Cameron, Louisiana, and 56 miles south-southwest of Vermilion Parish, Louisiana.	08/09/01
Coastal, Structure Removal Activity, SEA No. ES/SR 01-068.	Matagorda Island Area, Block 639, OCS-G 04542, 29 miles south-southeast of Port O'Connor, Texas, and 21 miles southeast of Calhoun County, Texas.	08/09/01
Prime Natural Resources, Inc., Structure Removal Activity, SEA No. ES/SR 01-069.	High Island Area, Block 131, Lease OCS-G 14863, 51 miles southwest of Cameron, Louisiana, and 28 miles south of Jefferson County, Texas.	08/09/01
Callon Petroleum Company, Structure Removal Activity, SEA Nos. ES/SR 01-070 and 01-071.	Main Pass (South and East Addition) Area, Block 165, Lease OCS-G 05705, 27 miles east-southeast of St. Bernard Parish, Louisiana, and 61 miles northeast of Venice, Louisiana.	08/13/01
Agip Petroleum Company, Structure Removal Activity, SEA No. ES/SR 01-073.	Grand Isle Area, Block 102, Lease OCS-G 05662, 46 miles south-southeast of Lafourche Parish, Louisiana, and 48 miles south-southeast of Fourchon, Louisiana.	08/20/01
Kerr-McGee Oil & Gas Corporation, Structure Removal Activity, SEA No. ES/SR 01-075.	High Island Area, Block A 327, Lease OCS-G 02418, 113 miles south-southeast of Sabine, Texas, and 107 miles south-southeast of Jefferson County, Texas.	08/21/01
Tri-Union Development Corporation, Structure Removal Activity, SEA No. ES/SR 01-076.	Brazos Area, Block 476, Lease OCS-G 11274, 15 miles southeast of Matagorda County, Texas, and 88 miles southwest of Galveston, Texas.	08/23/01
Unocal, Structure Removal Activity, SEA No. ES/SR 99-114A	High Island Area, Block A 302, Lease OCS-G 02732, 91 miles southeast of Galveston County, Texas, and 97 miles southeast of SEA Freeport, Texas.	08/23/01

Persons interested in reviewing environmental documents for the proposals listed above or obtaining

information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact

MMS at the address or telephone in the **FOR FURTHER INFORMATION** section.

Dated: September 10, 2001.

Chris C. Oynes.

Regional Director, Gulf of Mexico OCS Region.
[FR Doc. 01-25027 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of meetings of the Native American Graves Protection and Repatriation Review Committee.

General Information

The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101-601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the Native American Graves Protection and Repatriation Act (NAGPRA).

Persons wishing further information concerning review committee meetings may contact Mr. John Robbins, Assistant Director, Cultural Resources Stewardship and Partnerships, Designated Federal Official, Native American Graves Protection and Repatriation Review Committee 1849 C Street NW - 350 NC, Washington, DC 20240, telephone (202) 343-3388, facsimile (202) 343-5260, e-mail john_robbins@nps.gov. Transcripts of review committee meetings are available for public inspection approximately eight weeks after each meeting at the office of the Assistant Director, Cultural Resources Stewardship and Partnerships, Designated Federal Official, Native American Graves Protection and Repatriation Review Committee 800 North Capitol Street NW, Suite 350, Washington, DC 20001.

The protocol for review committee meetings is posted on the National NAGPRA Website (www.cr.nps.gov/nagpra; click "Review Committee," then click "Procedures").

Tribes, Alaska Native Villages and Corporations, and Native Hawaiian Organizations that are considering visits to museums or Federal agencies in review committee meeting locations for the purpose of transfers of repatriated human remains and cultural items may wish to schedule transfers to coincide

with review committee meetings. Note that repatriation transfers may be supported by "repatriation awards" administered under the NAGPRA grants program. Information about NAGPRA grants is posted on the National NAGPRA Website (www.cr.nps.gov/nagpra; click "NAGPRA Grants").

Cambridge, MA, meeting: November 2001

At the invitation of Harvard Law School and Peabody Museum of Archaeology and Ethnology, Harvard University, the review committee will meet on November 17-19, 2001, at Harvard Law School, in the Ropes Gray Room on the second floor of Pound Hall, 1563 Massachusetts Avenue, Cambridge, MA. A Harvard Law School map is available online (www.law.harvard.edu; click "About HLS," then click "Map of Law School campus").

The agenda for the meeting will include consideration of a dispute proposed by the Fallon Paiute-Shoshone Tribe, discussion of Federal agency compliance, contamination of cultural items, discussion of the NAGPRA grants program, and implementation of the statute in the northeastern United States.

Meeting sessions will begin at 8:30 a.m. and end no later than 5:00 p.m. each day. The meeting is open to the public. Meeting space is limited and persons will be accommodated on a first-come, first-served basis. Persons wishing to make a presentation to the review committee should submit a request to do so by October 19, 2001, including a written abstract of your presentation and your contact information. Persons may also submit written statements for consideration by the review committee by October 19, 2001. Requests and statements should be addressed to the review committee in care of the Assistant Director, Cultural Resources Stewardship and Partnerships, Designated Federal Official, Native American Graves Protection and Repatriation Review Committee 1849 C Street NW - 350 NC, Washington, DC 20240.

No special lodging arrangements have been made for this meeting; accommodations are available in Cambridge, Boston, and nearby communities.

On November 19, 2001, following the conclusion of the review committee meeting, the Peabody Museum of Archaeology and Ethnology invites all meeting attendees to celebrate the raising of a new totem pole, the Kaats and Bear pole, in the Hall of the North American Indian, Peabody Museum of

Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA, at 3:30 p.m. A reception at the museum will follow the pole raising.

Tulsa, OK, meeting: May-June 2002

At the invitation of the University of Tulsa, the review committee will meet on May 31 and June 1-2, 2002 (tentative dates) at the University of Tulsa, Tulsa, OK. A notice including final meeting dates, the meeting agenda, and other meeting detail will be published in the Federal Register at least 90 days prior to the Tulsa, OK, meeting.

Dated: July 17, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships, Designated Federal Official, Native American Graves Protection and Repatriation Review Committee

[FR Doc. 01-24962 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-70-S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Caddo Indian Tribe of Oklahoma.

In 1966, human remains representing two individuals were collected from the Bayou Sel site, Clark County, AR, by

Frank Schambach as part of a Peabody Museum expedition. No known individuals were identified. The 566 associated funerary objects include partial and complete ceramic vessels, ceramic sherds, a bone object, a shell object, a stone object, and 102 soil samples taken from the ceramic vessels.

Based on ceramic style and burial context, these human remains and associated funerary objects have been identified as Native American dating to the Mid-Ouachita Phase of the Late Caddoan period (C.E. 1350-1500). The archeological record of the Bayou Sel site is attributed to the Mid-Ouachita focus, a phase recognized as representing the fluorescence of Caddoan culture in the Ouachita Valley of Arkansas. Cartographic and historical information suggest that the Upper Ouachita River was occupied by the Cahinnio, a group that joined with the Kadohadacho Confederacy during the 18th century. The present-day Indian tribe culturally affiliated with the Kadohadacho Confederacy is the Caddo Indian Tribe of Oklahoma.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 566 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Caddo Indian Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before November 5, 2001. Repatriation of the human remains and associated funerary objects to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 12, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01-24959 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-70-S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 42 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Cayuga Nation of New York; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Oneida Nation of New York; Oneida Tribe of Wisconsin; Onondaga Nation of New York; St. Regis Band of Mohawk Indians of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Stockbridge-Munsee Community of Mohican Indians of Wisconsin; Tonawanda Band of Seneca Indians of New York; Tuscarora Nation of New York; and the nonfederally recognized Mohawk Nation Council of Chiefs.

In 1886, human remains representing five individuals were donated to the Peabody Museum of Archaeology and Ethnology by W.W. Adams. Museum documentation indicates that in 1886, two of these individuals were recovered

by Mr. Adams from the St. Joseph site in Union Springs, NY. According to museum documentation, Mr. Adams recovered three other individuals from Cayuga County, NY, the same year, but there is no additional provenience information available for these remains. No known individuals were identified. No associated funerary objects are present.

Museum information indicates that the interments from the St. Joseph site most likely date to the Late Woodland period (A.D. 1000-1600). Artifacts recovered from the site, but not associated with the burials, are stylistically indicative of the Late Woodland period. These objects include stone mortars and ceramics of typical Iroquoian designs. The location of copper staining on the human remains suggests the use of a shroud pin, and it is therefore likely that these interments date to the Contact or Historic period (post-A.D. 1500).

In 1889, human remains representing 21 individuals were recovered from Avon, NY, by F.W. Putnam, who donated the remains to the Peabody Museum of Archaeology and Ethnology the same year. No known individuals were identified. The 592 associated funerary objects include copper, glass, shell, and catlinite beads; ceramic sherds and vessels; wooden knife handle fragments; animal bones and teeth, including bird bones and a portion of a tortoise carapace rim; chipped chert; hematite; a tomahawk; iron knives, an iron point, and iron fragments; pewter implements; a brass kettle; sheet brass; a copper-plated iron bell; sheet copper; copper ornaments; a shell pendant; a textile fragment; a piece of lead; and a fossil.

Documentary records in the possession of the Peabody Museum of Archaeology and Ethnology indicate that these remains came from a series of excavations led by Mr. Putnam at burial locations in Avon. The exact locations of these excavations are not documented, although two specific sites, the Brush Creek and Fort Hill sites, are described in the field notebook. Museum documentation indicates that the Fort Hill site was located on Anson Miller's farm. It is likely that these two sites are adjacent to each other, possibly separated by Brush Creek. The sites are thought to be located in the vicinity of the Bosley Mill site along Route 15, near Trip Hammer Road, in the southeastern section of Avon. More precise provenience information is not available. Museum information indicates that interments from the sites most likely date to the Historic period (post-A.D. 1700).

Artifacts recovered with the burials date from the 17th and 18th centuries. The lack of a fortified village enclosure and the dispersed settlement pattern further suggest that the remains were interred after 1675.

In 1889, human remains representing one individual were donated to the Peabody Museum of Archaeology and Ethnology by Anson Miller. Museum documentation indicates that Mr. Miller recovered these remains, probably the same year, from Avon, NY. No known individual was identified. The 25 associated funerary objects include parts of 2 ceramic vessels.

Documentary records in the possession of the Peabody Museum of Archaeology and Ethnology indicate that these remains came from the same area as a series of excavations led by F.W. Putnam at burial locations in Avon in 1889, and that the remains are from the (Anson) Miller's Farm site. These burial sites are thought to be located in the vicinity of the Bosley Mill site along Route 15, near Trip Hammer Road, in the southeastern section of Avon. Museum information indicates that interments from this series of sites most likely date to the Historic period (post-A.D. 1700). The lack of a fortified village enclosure and the dispersed settlement pattern further suggest that the remains were interred after 1675.

In 1896, human remains representing one individual were recovered near Buffalo, NY, during a Peabody Museum expedition led by F.W. Putnam. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that these remains were recovered from a village site near Buffalo. This interment most likely dates to the Contact period (A.D. 1500–1700). Although no artifacts are known to be associated with the remains, other artifacts recovered from the site date to the early Contact period. These objects include fragments of brass and copper sheeting and triangular stone projectile points.

In 1903, human remains representing 122 individuals were recovered from Brant, NY, during a Peabody Museum expedition led by M.R. Harrington and A.C. Parker. No known individuals were identified. The 1,478 associated funerary objects include charred corn and acorns; potter's stones, polishing stones, nutting stones and other worked stones; broken celts; flaked chert and debitage; a piece of chipped quartz or red jasper; ceramic sherds, vessels and pipes; iron knives, scissors, awls, and an axe; pigment; glass, shell, catlinite, copper, and brass beads; bracelets of iron, brass, and wire; brass jingles, brass

earrings, and a brass point; sheet brass; broken and charred wooden objects; shells; animal bones, hide and teeth, including fish teeth; worked turtle shell, fragments that are probably part of a rattle, and small pebbles from a rattle; bone tubes and an awl; antler arrow flakers; charcoal; bark; and an organic concretion.

Museum records indicate that these human remains and associated funerary objects were recovered from the Silverheels site. This site is located within the town of Brant, 1.5 miles east of the village of Irving, on the Cattaraugus Indian Reservation, approximately 2.5 miles upstream of Lake Erie on Cattaraugus Creek. These interments most likely date to the Contact period (A.D. 1500–1700). Artifacts recovered from the site which support this date include iron and early colonial artifacts, Levanna- and Madison-style projectile points; ceramic vessels with globular bodies, constricted, zoned incised necks, and castellated rims; and a variety of terra cotta pipes, including pipes with trumpet-shaped bowls and bowls with representations of human faces and animals. In addition, multivariate attribute analysis of the ceramic artifacts indicates that the site dates to the early 17th century. In addition to the 1,478 associated funerary objects, a projectile point embedded in a vertebra of an individual is included for repatriation in this notice, although not specifically required under NAGPRA.

In 1904, human remains representing 36 individuals were recovered from Ripley, NY, during a Peabody Museum expedition led by M.R. Harrington. No known individuals were identified. The 220 associated funerary objects include whole and broken ceramic vessels; chert knives and stone tools, including a point, drill, and chip; a notched net sinker; a smoothing stone; a celt; a worked stone; brass and shell beads, an iron knife blade; an antler arrow flaker; animal claws, bones, and teeth; bone and antler implements, including a perforator and a hoe; a piece of worked shell; fragments of turtle shell; and red ochre.

Museum records indicate that these remains came from the Ripley archeological site in the township of Ripley, approximately 5 kilometers east of the Pennsylvania border, on a sandy bluff immediately above Lake Erie. At the time of excavation, the land was owned by William Young. These interments most likely date to the Late Woodland period or later (post-A.D. 1000). Radiocarbon dating indicates that the site is multicomponent with occupations between A.D. 1300–1450

and A.D. 1550–1650. Artifacts recovered from site date to the Late Woodland period (A.D. 1000–1600). These objects include Levanna- and Madison-style projectile points, ceramic vessels with globular bodies, constricted, zoned incised necks, and castellated rims, and a variety of terra cotta pipes, including pipes with trumpet-shaped bowls and bowls with representations of human faces and animals.

In 1936, human remains representing one individual were discovered uncatalogued in the Peabody Museum of Archaeology and Ethnology. Museum documentation suggests that these remains are from Ripley, NY. No known individual was identified. No associated funerary objects are present.

Museum records indicate that these remains were originally from Chautauqua County, NY. According to museum documents, the only collection accessioned into the museum from Chautauqua County is associated with the Ripley site. It is therefore likely that these remains originate from that site. Radiocarbon dating indicates that the Ripley site is multicomponent with occupations between A.D. 1300–1450 and A.D. 1550–1650. Artifacts recovered from site date to the Late Woodland period (A.D. 1000–1600). These objects include Levanna- and Madison-style projectile points, ceramic vessels with globular bodies, constricted zoned incised necks, and castellated rims, and a variety of terra cotta pipes, including pipes with trumpet-shaped bowls and bowls with representations of human faces and animals.

In 1905, human remains representing five individuals were recovered from the Mohawk Valley in New York during a Peabody Museum expedition led by M.R. Harrington and I. Hayden. The remains of three individuals were recovered from Ephratah, Fulton County, NY. The remains of two individuals were recovered from nearby St. Johnsville, Montgomery County, NY. No known individuals were identified. The 29 associated funerary objects include lithic rejects, a hammerstone, a miniature ceramic vessel, broken pipe stems, worked deer phalanges, and ceramic sherds.

Museum records indicate that the remains of 3 individuals and 28 associated funerary objects came from the Garoga site, 6 miles north of the Mohawk River, along the eastern bank of Caroga Creek, and that the remains of 2 individuals and 1 associated funerary object came from the Ganada site, adjacent to Crumb Creek. Remains from both sites most likely date to the terminal Late Woodland period (A.D. 1300–1600). Objects recovered from the

sites that support this date include Madison-style projectile points, ceramic vessels with globular bodies, constricted zoned incised necks, and castellated rims, and a variety of terra cotta pipes, including pipes with trumpet-shaped bowls and bowls with representations of human faces and animals. Ceramic seriation and radiocarbon dating suggest that the sites date to A.D. 1525–1545.

In 1921, human remains representing two individuals were recovered from Athens, PA, during a Peabody Museum expedition led by Paul F. Scott. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that the site was discovered by workmen digging a gas pipeline trench in Athens. The site is described as being located in the narrowest portion of land between the Susquehanna and Chemung Rivers. This interment most likely dates to the Late Woodland period (A.D. 1000–1600). Ceramic fragments recovered from the site, although not associated with the burial, include body sherds with a smooth finish and a collar with a zoned, linear punctate design. The fragments likely represent an Owasco Corded Collar, dating to the early Late Woodland period (A.D. 1000–1300).

In 1933, human remains representing one individual were donated to the Peabody Museum of Archaeology and Ethnology by R.P. Bigelow. Museum documentation indicates that the remains were recovered from Baldwinsville, NY, by an unknown collector in 1885. No known individual was identified. No associated funerary objects are present.

According to museum records, the human remains came from a burial ground in Baldwinsville. The remains were apparently excavated on the site of the West Shore Railway in 1885. Despite a lack of documented diagnostic artifacts, the preponderance of the evidence, based upon museum records, indicates that these remains date to the Late Woodland or Contact period (A.D. 1000–1700).

In 1937, human remains representing one individual from Elmira, NY, were donated to the Peabody Museum of Archaeology and Ethnology as part of a collection from the Department of Archaeology, Phillips Andover Academy, Andover, MA. According to museum records, these remains were recovered by F. Smith before 1937. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that these remains come from an Iroquois site in Elmira. Despite a lack of documented diagnostic artifacts, the

preponderance of the evidence, based upon museum records, indicates that these remains date to the Late Woodland or Contact period (A.D. 1000–1700).

In 1938, human remains representing one individual from Chautauqua County, NY, were donated to the Peabody Museum of Archaeology and Ethnology. According to museum records, these remains were collected between 1888 and 1916. No known individual was identified. No associated funerary objects are present.

Museum documentation describes the human remains as "Iroquois." The attribution of such a specific cultural affiliation to the human remains indicates that the interment postdates sustained contact between indigenous groups and Europeans beginning in the 17th century. Both consultation and historic evidence support the identification of the area from which the human remains were recovered as Iroquois territory at that time.

Excavation and museum records indicate that these human remains and associated funerary objects were removed from specific burials of Native American individuals. Based on the date and the provenience of the human remains and associated funerary objects from areas considered to be aboriginal homelands and traditional burial areas of the Iroquois, a reasonable link of shared group identity may be made between these human remains and associated funerary objects and the present-day tribes who represent the Iroquois: the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York, and Tuscarora Nation of New York.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains described above represent the physical remains of 197 individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2(d)(2), the 2,344 associated funerary objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2(e), there is a

relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York, and Tuscarora Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York, Tuscarora Nation of New York, and the nonfederally recognized Mohawk Nation Council of Chiefs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before November 5, 2001. Repatriation of these human remains and associated funerary objects to the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York, and Tuscarora Nation of New York may begin after that date if no additional claimants come forward.

Dated: July 3, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01-24963 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 42 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Cayuga Nation of New York; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Oneida Nation of New York; Oneida Tribe of Wisconsin; Onondaga Nation of New York; St. Regis Band of Mohawk Indians of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Stockbridge-Munsee Community of Mohican Indians of Wisconsin; Tonawanda Band of Seneca Indians of New York; Tuscarora Nation of New York; and the nonfederally recognized Mohawk Nation Council of Chiefs.

In 1906, human remains representing 41 individuals were recovered from Heath Farm, in Rodman, NY, during a Peabody Museum expedition led by M.R. Harrington and I. Hayden. No known individuals were identified. The six associated funerary objects are unfinished celts, bone awls, yellow ochre, and animal bones.

Museum documentation indicates that the Heath Farm site is on the western border of the township of Rodman, approximately 1.5 miles west of the village of Rodman, along the northern bank of the North Sandy Creek. Interments from this site most likely date to the Late Woodland period (A.D. 1000-1600). Artifacts recovered from the site, but not associated with the burials, support this date. These objects include Levanna- and Madison-style projectile points, ceramic vessels with globular bodies, constricted, zoned incised necks, and castellated rims, and a variety of terra cotta pipes, including pipes with trumpet-shaped bowls and

bowls with representations of human faces and animals.

In 1906, human remains representing 14 individuals were recovered from Durfee Farm, in Ellisburg, NY, during a Peabody Museum expedition led by M.R. Harrington and I. Hayden. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that the Durfee Farm site is in the township of Ellisburg, 3 miles north-northwest of the village of Pierrepoint Manor, between Taylor Brook and Spring Brook, in the vicinity of a scattered group of farmhouses that were known locally as the "Taylor settlement." The site lies on a low, flat-topped hill historically known as the "Old Fort lot," once belonging to the old Durfee farm. Interments from this site most likely date to the Late Woodland period (A.D. 1000-1600). Artifacts recovered from the site, but not associated with the burials, support this date. These objects include Levanna- and Madison-style projectile points, ceramic vessels with globular bodies, constricted, zoned incised necks, and castellated rims, and a variety of terra cotta pipes, including pipes with trumpet-shaped bowls and bowls with representations of human faces and animals.

In 1906, human remains representing three individuals were recovered from the Perch River Bay site, in Brownville, NY, during a Peabody Museum expedition led by M.R. Harrington and I. Hayden. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that the Perch River Bay site is located along the shore of Lake Ontario, at the head of Perch River Bay (now known as Black River Bay), in the township of Brownville, southwest of the village of Limerick, on what was then the farm of Julius Maynard. Interments from this site most likely date to the Late Woodland period (A.D. 1000-1600). Artifacts recovered from the site, but not associated with the burials, support this date. These objects include Levanna- and Madison-style projectile points, ceramic vessels with globular bodies, constricted, zoned incised necks, and castellated rims, and a variety of terra cotta pipes, including pipes with trumpet-shaped bowls and bowls with representations of human faces and animals.

Excavation and museum records clearly indicate that these human remains and associated funerary objects were removed from specific burials of Native American individuals. Based on the archeological materials from the

sites, museum documentation, and oral histories presented by the Oneida Nation of New York and Oneida Tribe of Wisconsin, and the provenience of human remains and associated funerary objects from areas considered to be aboriginal homelands and traditional burial areas of the Oneida Nation of New York and Oneida Tribe of Wisconsin, a reasonable link of shared group identity may be made to the Oneida Nation of New York and Oneida Tribe of Wisconsin.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 58 individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the six associated funerary objects described above are reasonably believed to have been placed with or near individual human remains at the times of death or later as part of the death rite or ceremony. Lastly, officials at the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Oneida Nation of New York and the Oneida Tribe of Wisconsin.

This notice has been sent to officials of the Cayuga Nation of New York; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Oneida Nation of New York; Oneida Tribe of Wisconsin; Onondaga Nation of New York; St. Regis Band of Mohawk Indians of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Stockbridge-Munsee Community of Mohican Indians of Wisconsin; Tonawanda Band of Seneca Indians of New York; Tuscarora Nation of New York; and the nonfederally recognized Mohawk Nation Council of Chiefs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before November 5, 2001. Repatriation of these human remains and associated funerary objects to the Oneida Nation of New York and the Oneida Tribe of Wisconsin may begin after that date if no additional claimants come forward.

Dated: July 3, 2001.

John Robbins,

*Assistant Director, Cultural Resources
Stewardship and Partnerships.*

[FR Doc. 01-24964 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10(a)(3), of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of "unassociated funerary objects" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 624 cultural items are ceramic sherds and vessels; projectile points, flaked chert tools and debitage; gunflint; notched stone; shell objects; a bone awl and disc; drilled bear and beaver teeth; shell, glass, copper, and stone beads; a copper tinkler; a brass ring; metal ornaments; an iron axe; pendants; antler doll; red ochre; paint stones; and stone, wooden, and ceramic pipes.

In 1879, 50 cultural items were donated to the Peabody Museum of Archaeology and Ethnology by Mr. Cowing and F. Larkin. The objects came from an unnamed mound in Cattaraugus County, NY, that was excavated in 1819. The objects are ceramic sherds, projectile points, bifaces, and an iron axe.

Museum records indicate that these objects were recovered from the site of a large mound, 20 feet high and 100 feet in diameter. The mound was located near the Allegheny River in western New York, "40 rods above Indian Council Head." The site most likely dates to the Late Woodland and Contact periods (A.D. 1000-1700). The presence of iron and iron implements of probable

European manufacture suggests a postcontact date (post-A.D. 1500). Other artifacts recovered from this site, including chert projectile points, support a Late Woodland and postcontact date. The Peabody Museum of Archaeology and Ethnology does not have possession of the human remains from this site.

In 1886, 100 cultural items were recovered from Union Spring, NY, and donated to the Peabody Museum of Archaeology and Ethnology by W.W. Adams. The objects are perforated shell beads and tubular shell beads.

Museum records indicate that these objects most likely came from the St. Joseph site in Union Springs. The site most likely dates to the Late Woodland period (A.D. 1000-1600) or later. Other artifacts recovered from the site, but not associated with burials, are stylistically indicative of the Late Woodland period. These objects include stone mortars and ceramics of typical Iroquoian designs. Copper staining on the human remains from the site suggests the use of a shroud pin and therefore an interment date during the Contact or Historic period (post-A.D. 1500). The Peabody Museum of Archaeology and Ethnology does not have possession of the human remains from this burial. The Peabody Museum of Archaeology and Ethnology has possession of human remains from other burials at this site, which are reported in a Notice of Inventory Completion.

In 1889, 102 cultural items were recovered in Avon, NY, by F.W. Putnam, who donated the objects to the Peabody Museum of Archaeology and Ethnology the same year. The objects are a hematite fragment, a piece of graphite, groundstone, a bone disc, ceramic sherds, complete and partial ceramic vessels, and red ochre.

The museum's documentary records indicate that these objects came from a series of excavations led by F.W. Putnam at burial sites in Avon. The exact locations of these excavations are not documented, although two specific sites, the Brush Creek and Fort Hill sites, are described in the field notebook. The sites are thought to be in the vicinity of the Bosley Mill site along Route 15, near Trip Hammer Road, in the southeastern section of Avon. These objects likely came from the Fort Hill site, located on Anson Miller's farm. More precise provenience information is not available. Artifacts recovered with the burials date from the 17th and 18th centuries, and museum information indicates that the objects from these sites most likely date to the Historic period (post-A.D. 1700). The Peabody Museum of Archaeology and Ethnology

does not have possession of the human remains from these burials. The Peabody Museum of Archaeology and Ethnology has possession of human remains from other burials at this site, which are reported in a Notice of Inventory Completion.

In 1889, one cultural item consisting of a gunflint was recovered from Avon, NY, and donated to the Peabody Museum of Archaeology and Ethnology by William Nesbit.

Museum records indicate that this object came from a grave in Avon. No additional provenience information is available. This object most likely dates to the Contact period or later (post-A.D. 1500). Firearms first appeared on Native American sites in the eastern United States during the first quarter of the 17th century, and with increasing frequency subsequent to their introduction. The Peabody Museum of Archaeology and Ethnology does not have possession of the human remains from this burial.

In 1903, 208 cultural items were recovered from the Silverheels site in Brant, NY, during a Peabody Museum expedition led by M.R. Harrington and A.C. Parker. The objects include ceramic sherds and vessels; cherts points and flakes; glass, copper, and catlinite beads; an animal skin fragment; shell objects; an antler doll; raccoon bacula; red ochre; and paint stones.

Museum records indicate that these objects were recovered from the Silverheels site in the town of Brant, 1.5 miles east of the village of Irving, on the Cattaraugus Indian Reservation, approximately 2.5 miles upstream of Lake Erie on the Cattaraugus Creek. These objects most likely date to the early Contact period (A.D. 1500-1700). Artifacts recovered from this site including Levanna- and Madison-style projectile points; ceramic vessels with globular bodies, constricted, zoned, incised necks, and castellated rims; and a variety of terra cotta pipes support a date from the early Contact period. Multivariate attribute and statistical analysis of ceramic artifacts from the site indicate that the site represents a single occupation during the early 17th century. The Peabody Museum of Archaeology and Ethnology does not have possession of the human remains from these burials. The Peabody Museum of Archaeology and Ethnology has possession of human remains from other burials at this site, which are reported in a Notice of Inventory Completion.

In 1922, 43 cultural items were donated to the Peabody Museum of Archaeology and Ethnology by J.H. Woods. These objects were collected at an unknown date and consist of a

projectile point; bone awl; bone ornament; drilled animal teeth; string of shell beads; and clay, wooden, and stone pipes, including an effigy pipe.

Museum records indicate that these objects came from graves in the Mohawk Valley and a village site in Ithaca, NY. No additional provenience information is available in museum documentation, although information provided during consultation indicates that the objects from Ithaca were from funerary contexts. These objects most likely date to the terminal Late Woodland and Contact periods (A.D. 1300-1700). The projectile point and shell beads are consistent with Late Woodland typologies, and both zoomorphic and anthropomorphic effigy pipes are closely associated with the Late Woodland and Early Contact periods. The Peabody Museum of Archaeology and Ethnology does not have possession of the human remains from these burials.

In 1985, 120 cultural items were donated to the Peabody Museum by William H. Claflin. These objects came from graves in Cayuga and Wyoming Counties, NY. The objects are metal ornaments and pendants; a copper tinkler; stone gorgets; and shell, stone, and glass beads.

The museum's documentary records indicate that these objects came from a series of excavations by C.C. Jones in the 19th century and W.H. Claflin in the 20th century. No site information is recorded, but some of the objects were recovered from the vicinity of Silver Lake in Wyoming County, while others were recovered near Venico in Cayuga County. These objects most likely date to the early Contact period or later (post-A.D. 1600), based on glass beads that were introduced by Europeans as trade items in the late 16th and early 17th centuries, tubular wampum of a more standardized form that usually dates to post-A.D. 1625, and objects of European copper that are common on sites that date to the second quarter of the 16th century and later. The Peabody Museum of Archaeology and Ethnology does not have possession of the human remains from these burials.

Excavation records, museum records, and consultation information indicate that the cultural items described above were removed from specific burials of Native American individuals. Based on the date and the provenience of the cultural items from areas considered to be aboriginal homelands and traditional burial areas of the Iroquois, a reasonable link of shared group identity may be made between these objects and the present-day tribes who represent the Iroquois: the Cayuga Nation of New

York, Oneida Nation of New York, Oneida Tribe of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York, and Tuscarora Nation of New York.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these unassociated funerary objects and the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York, and the Tuscarora Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Oneida Nation of New York; Oneida Tribe of Wisconsin; Onondaga Nation of New York; St. Regis Band of Mohawk Indians of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Stockbridge-Munsee Community of Mohican Indians of Wisconsin; Tonawanda Band of Seneca Indians of New York; Tuscarora Nation of New York; and the nonfederally recognized Mohawk Nation Council of Chiefs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before November 5, 2001. Repatriation of these unassociated funerary objects to the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of

Seneca Indians of New York, and the Tuscarora Nation of New York may begin after that date if no additional claimants come forward.

Dated: July 3, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01-24965 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10(a)(3), of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA that meet the definition of "unassociated funerary objects" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 10 cultural items were donated to the Peabody Museum of Archaeology and Ethnology by J.H. Woods in 1922. These objects were collected at an unknown date and consist of one shell ornament, one unfinished stone discoidal, one effigy head bead, and seven shell and glass beads.

According to museum documentation, these cultural items came from graves in unknown locations throughout Broome County, NY. No additional provenience information is available. These objects most likely date to the Contact period or later (post-A.D. 1500). Glass beads were introduced by Europeans as trade items in the late 16th and early 17th centuries, and the effigy bead appears to have been carved with a metal tool, which would have been available only from the Contact period on. The Peabody Museum of Archaeology and Ethnology does not have possession of the human remains from these burials.

Museum records clearly indicate that these cultural items were removed from specific burials of Native American individuals. Based on the archeological materials from the sites, museum documentation, oral histories presented by the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York, and Tuscarora Nation of New York, the date of the cultural items, and the provenience of these cultural items from areas considered to be aboriginal homelands and traditional burial areas of the Oneida, a reasonable link of shared group identity may be made between these cultural items and the Oneida Nation of New York and the Oneida Tribe of Wisconsin.

Based upon the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these 10 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these unassociated funerary objects and the Oneida Nation of New York and the Oneida Tribe of Wisconsin.

This notice has been sent to officials of the Cayuga Nation of New York; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Oneida Nation of New York; Oneida Tribe of Wisconsin; Onondaga Nation of New York; St. Regis Band of Mohawk Indians of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Stockbridge-Munsee Community of Mohican Indians of Wisconsin; Tonawanda Band of Seneca Indians of New York; Tuscarora Nation of New York; and the nonfederally recognized Mohawk Nation Council of Chiefs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue,

Cambridge, MA 02138, telephone (617) 496-3702, before November 5, 2001. Repatriation of these unassociated funerary objects to Oneida Nation of New York and the Oneida Tribe of Wisconsin may begin after that date if no additional claimants come forward.

Dated: July 3, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01-24966 Filed 10-4-01 ; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10(a)(3), of the intent to repatriate a cultural item in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meets the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of this cultural item. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the cultural item was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Cayuga Nation of New York; Delaware Tribe of Indians, Oklahoma; Delaware Nation, Oklahoma; Oneida Nation of New York; Oneida Tribe of Wisconsin; Onondaga Nation of New York; St. Regis Band of Mohawk Indians of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Stockbridge-Munsee Community of Mohican Indians of Wisconsin; Tonawanda Band of Seneca Indians of New York; Tuscarora Nation of New York; and the nonfederally recognized Mohawk Nation Council of Chiefs.

The one cultural item is a brass finger ring.

Around 1880, the brass finger ring was donated to the Peabody Museum of Archaeology and Ethnology by Alexander Howell. The object was excavated near Canandaigua, Ontario County, NY.

According to museum documentation, the ring was recovered from a grave near Canandaigua. No additional provenience information is available, but it is believed that the grave was that of a Native American individual. Because this ring is brass, and brass was only introduced with European trade, the ring can be dated to the Contact or Historic period (post-A.D. 1500). Historic sources and consultation information indicate that Canandaigua was part of the Seneca territory during the Contact and Historic periods. The Peabody Museum of Archaeology and Ethnology does not have possession of the human remains from this burial.

Based upon the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), this cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between this unassociated funerary object and the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and the Tonawanda Band of Seneca Indians of New York.

This notice has been sent to officials of the Cayuga Nation of New York; Delaware Tribe of Indians, Oklahoma; Delaware Nation, Oklahoma; Oneida Nation of New York; Oneida Tribe of Wisconsin; Onondaga Nation of New York; St. Regis Band of Mohawk Indians of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Stockbridge-Munsee Community of Mohican Indians of Wisconsin; Tonawanda Band of Seneca Indians of New York; Tuscarora Nation of New York; and the nonfederally recognized Mohawk Nation Council of Chiefs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this unassociated funerary object should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of

Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before November 5, 2001. Repatriation of this unassociated funerary object to the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and the Tonawanda Band of Seneca Indians of New York may begin after that date if no additional claimants come forward.

Dated: July 3, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01-24967 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM, that meets the definition of "sacred object" and "object of cultural patrimony" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a Na' at' oye Jish ceremonial bundle of faunal materials, minerals, leather, and cloth.

In 1967, this cultural item was purchased by the Maxwell Museum of Anthropology, University of New Mexico from Fred Hughes of Kirtland, NM. The museum has no information regarding the circumstances of the collection of this cultural item by Mr. Hughes.

Documentation associated with the Na' at' oye Jish ceremonial bundle and information provided by representatives of the Navajo Nation, Arizona, New Mexico & Utah confirm that a relationship of shared group identity

exists between the original makers of the ceremonial bundle and the Navajo Nation, Arizona, New Mexico & Utah. Representatives of the Navajo Nation, Arizona, New Mexico & Utah also have indicated that this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Representatives of the Navajo Nation, Arizona, New Mexico & Utah provided evidence that this cultural item has ongoing historical, traditional, and cultural importance central to the tribe itself, and is of such central importance that it may not be alienated, appropriated, or conveyed, by any individual tribal or organization member.

Based on the above-mentioned information, officials of the Maxwell Museum of Anthropology, University of New Mexico have determined that, pursuant to 43 CFR 10.2 (d)(3), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Maxwell Museum of Anthropology, University of New Mexico also have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance central to the tribe itself, and is of such central importance that it may not be alienated, appropriated, or conveyed, by any individual tribal or organization member. Lastly, officials of the Maxwell Museum of Anthropology, University of New Mexico have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this sacred object/object of cultural patrimony and the Navajo Nation, Arizona, New Mexico & Utah.

This notice has been sent to officials of the Navajo Nation, Arizona, New Mexico & Utah. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this sacred object/object of cultural patrimony should contact Dr. Michael A. Lewis, Curator of Archaeology, Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM, 87131, telephone (505) 277-1548, facsimile (505) 277-1547, before November 5, 2001. Repatriation of this sacred object/object of cultural patrimony to the Navajo Nation, Arizona, New Mexico & Utah may begin after that date if no additional claimants come forward.

Dated: July 17, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01-24961 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-70-S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA, that meet the definition of "sacred objects;" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determination within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural items are two bird rattles, an eagle feather headdress, a cedar bark headband, a bottle of red paint, a beaded otter-skin sash, a carved wooden staff, and a drum and drumstick.

A bird rattle painted blue and red (catalog number 78) was collected by the Reverend Myron Eells for the Washington World's Fair Commission in 1893. Museum documentation provides a description by Rev. Eells of the rattle: "Black Tamahnous rattle used in religious ceremonies. Obtained from Billy Hall, a Quinaiaelt." The rattle was a gift to the Thomas Burke Memorial Washington State Museum from the Washington World's Fair Commission after the fair in 1893. Consultation evidence provided by representatives of the Quinault Tribe of the Quinault Indian Reservation, Washington, indicates that this bird rattle is essential to the Klookwalli religious practices of the tribe.

In 1938, the Thomas Burke Memorial Washington State Museum purchased an unpainted bird rattle identified as Quinault (catalog number 1-7) from Glenn Gwin. Consultation evidence

provided by representatives of the Quinault Tribe of the Quinault Indian Reservation, Washington, indicates that this bird rattle is essential to the Klookwalli religious practices of the tribe.

An eagle feather headdress (catalog number 69) was collected by the Reverend Myron Eells on the Quinault Reservation for the Washington World's Fair Commission in 1893. Museum documentation provides a description by Rev. Eells of the headdress: "Tamahnous head dress obtained by James Kohta, an Indian of the reservation, worn during religious ceremonies." The headdress was a gift to the Thomas Burke Memorial Washington State Museum from the Washington World's Fair Commission after the fair in 1893. Consultation evidence provided by representatives of the Quinault Tribe of the Quinault Indian Reservation, Washington, indicates that this headdress is essential to the Klookwalli religious practices of the tribe.

A cedar bark headband (catalog number 170) was collected by the Reverend Myron Eells on the Quinault Reservation for the Washington World's Fair Commission in 1893. Museum documentation provides a description by Rev. Eells of the headband: "Tamahnous head band of cedar bark used in religious ceremonies, obtained from Bob Pope, a Quinaielt." The headdress was a gift to the Thomas Burke Memorial Washington State Museum from the Washington World's Fair Commission after the fair in 1893. Consultation evidence provided by representatives of the Quinault Tribe of the Quinault Indian Reservation, Washington, indicates that this headdress is essential to the Klookwalli religious practices of the tribe.

A bottle of red paint (catalog number 180) was collected by the Reverend Myron Eells on the Quinault Reservation for the Washington World's Fair Commission in 1893. Museum documentation provides a description by Rev. Eells of the item: "red paint." The paint was a gift to the Thomas Burke Memorial Washington State Museum from the Washington World's Fair Commission after the fair in 1893. Consultation evidence provided by representatives of the Quinault Tribe of the Quinault Indian Reservation, Washington, indicates that red paint is essential to the Klookwalli religious practices of the tribe.

A beaded otter-skin sash with attached deer-hoof rattles (catalog number 5) was collected by the Reverend Myron Eells on the Quinault Reservation for the Washington World's

Fair Commission in 1893. Museum documentation provides a description by Rev. Eells of the sash: "Otter Tamahnous or beaded work on an otter skin used in religious ceremonies. Obtained from John Clipp an Indian of the reservation. The last of a suit of the kind." John Clipp was a known Quinault speaker and leader of ceremony, which is a sacred appointment. The sash was a gift to the Thomas Burke Memorial Washington State Museum from the Washington World's Fair Commission after the fair in 1893. The beaded otter-skin sash has been identified as river otter by zoologists at the Thomas Burke Memorial Washington State Museum and Rev. Eells' notes further identify the sash as having come to Mr. Clipp from the Yakama or Klickitat in trade. The style of beadwork on the sash supports this evidence, though some Quinault women are known to have done beadwork as early as 1890. Consultation evidence provided by representatives of the Quinault Tribe of the Quinault Indian Reservation,

Washington, indicates that this sash is essential to religious practices of the tribe. The addition of deer hoof rattles to the sash is consistent with its use as a religious object by the Quinault, and indicates the sacred use of the sash.

A wooden staff carved in the form of a human figure with inlaid glass beads at the eyes and a button inlaid at the chest (catalog number 79) was collected by the Reverend Myron Eells on the Quinault Reservation for the Washington World's Fair Commission in 1893. Museum documentation provides a description by Rev. Eells of the staff: "Tamahnous stick for carrying in the hand used in religious ceremonies." The staff was a gift to the Thomas Burke Memorial Washington State Museum from the Washington World's Fair Commission after the fair in 1893. Consultation evidence provided by representatives of the Quinault Tribe of the Quinault Indian Reservation, Washington, indicates that this type of staff is used for personal spirit power and functions to expel malicious spirits that may be upon a person. At the current time, there are a number of individuals in the Quinault Tribe of the Quinault Indian Reservation, Washington, that are undergoing training in the use of this type of power staff and, therefore, this object is essential to religious healing practices of the tribe.

An unpainted round skin drum and drumstick (catalog number 91) was collected by the Reverend Myron Eells on the Quinault Reservation for the Washington World's Fair Commission

in 1893. The drum was a gift to the Thomas Burke Memorial Washington State Museum from the Washington World's Fair Commission after the fair in 1893. Museum documentation provides a description by Rev. Eells of the item: "Drum obtained from Willie Mason a Quinaielt but bought by him at Neah Bay. Covered with skin of sea lion." Consultation evidence provided by representatives of the Quinault Tribe of the Quinault Indian Reservation, Washington, indicates that this drum and drumstick are essential to ongoing religious practices of the tribe. The drum in Quinault society is used in many arenas, but its use is sacred within each setting, and is used to accompany ritual singing and dancing during ongoing religious practices.

Documentation associated with these cultural items and information provided by representatives of the Quinault Tribe of the Quinault Indian Reservation, Washington, indicates that these cultural items are specific ceremonial objects needed by traditional Quinault religious leaders for the practice of traditional Native American religion by present-day adherents. Representatives of the Quinault Tribe of the Quinault Indian Reservation, Washington, also confirmed that there is a relationship of shared group identity between these sacred objects and the Quinault Tribe of the Quinault Indian Reservation, Washington.

Based on the above-mentioned information, officials of the Thomas Burke Memorial Washington State Museum have determined that, pursuant to 43 CFR 10.2 (d)(3), these eight cultural items are specific ceremonial items needed by traditional Native American religious leaders of the Quinault Tribe of the Quinault Indian Reservation, Washington, for the practice of traditional Native American religion by present-day adherents. Officials of the Thomas Burke Memorial Washington State Museum also have determined that there is a relationship of shared group identity that can be reasonably traced between these sacred objects and the Quinault Tribe of the Quinault Indian Reservation, Washington.

This notice has been sent to officials of the Quinault Tribe of the Quinault Indian Reservation, Washington. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these sacred objects should contact Robin K. Wright, Curator of Native American Art, Burke Museum, Box 353010, University of Washington, Seattle, WA 98195-3010, telephone (206) 543-5595, before November 5, 2001. Repatriation of these eight sacred

objects to the Quinault Tribe of the Quinault Indian Reservation, Washington, may begin after that date if no additional claimants come forward.

Dated: July 18, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01-24960 Filed 10-4-01; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-522-425 and 731-TA-964-983 (Preliminary)]

Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigations Nos. 701-TA-422-525 and antidumping investigations Nos. 731-TA-964-983 (Preliminary) under sections 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina, Brazil, France, and Korea of certain cold-rolled steel products that are alleged to be subsidized by the Government of Argentina, Brazil, France, and Korea; and by reason of imports of certain cold-rolled steel products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must

reach a preliminary determination in countervailing duty and antidumping investigations in 45 days, or in this case by November 13, 2001. The Commission's views are due at Commerce within five business days thereafter, or by November 20, 2001.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207). **EFFECTIVE DATE:** September 28, 2001.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons are obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol/public>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on September 28, 2001, by Bethlehem Steel Corporation (Bethlehem, PA); LTV Steel Co., Inc. (Cleveland, OH); National Steel Corporation (Mishawaka, IN),¹ Nucor Corporation (Charlotte, NC); Steel Dynamics Inc. (Butler, IN); United States Steel LLC (Pittsburgh, PA); WCI Steel, Inc. (Warren, OH); and Weirton Steel Corporation (Weirton, WV).²

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and

antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 19, 2001, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Diane Mazur (202-205-3184) not later than October 16, 2001, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 24, 2001, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

¹ National is not a petitioner with respect to Japan.

² Weirton is not a petitioner with respect to the Netherlands.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all the parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 1, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01-24986 Filed 10-4-01; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-426 and 731-TA-984 and 985 (Preliminary)]

Sulfanilic Acid From Hungary and Portugal

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701-TA-426 and antidumping investigations Nos. 731-TA-984 and 985 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Hungary of sulfanilic acid¹ provided for in subheadings 2921.42.22 and 2921.42.90 for the Harmonized Tariff Schedule of the United States that are alleged to be subsidized by the Government of Hungary, and by reason of imports of sulfanilic acid from Hungary and Portugal that are alleged to be sold in

the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by November 13, 2001. The Commission's views are due at Commerce within five business days thereafter, or by November 20, 2001.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 28, 2001.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-205-3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol/public>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on September 28, 2001, by National Ford Chemical Co. of Fort Mill, SC.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the *Federal Register*. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations

upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 18, 2001, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-205-3191) not later than October 16, 2001, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 23, 2001, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and

¹ The products covered by these investigations are all grades of sulfanilic acid which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and sodium salt of sulfanilic acid (sodium sulfanilate).

a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 1, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01-24987 Filed 10-4-01; 8:45 am]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 12, 2001 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. Nos. 701-TA-417-421 and 731-TA-953-963 (Preliminary) (Carbon and Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on October 15, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on November 2, 2001.)
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 3, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01-25304 Filed 10-3-01; 3:11 pm]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of information collection under review; new collection; Violent Criminal Apprehension Program (VICAP) Sexual Assault Crime Analysis Report.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Public comments are encouraged and will be accepted until December 4, 2001. We 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 items(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Unit Chief Thomas C. Knowles, Supervisory Special Agent, VICAP, FBI Academy, Quantico, VA 22135.

Overview of This Information Collection

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: Violent Criminal Apprehension Program (VICAP) Sexual Assault Crime Analysis Report.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: to be assigned. Department of Justice, Federal Bureau of Investigation, Violent Criminal Apprehension Program Unit.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal Government. Brief Abstract: Collects data of crime scenes (e.g., unsolved murders) for analysis by VICAP staff of the FBI. Law enforcement agencies reporting similar pattern crimes will be provided information to initiate a coordinated multi-agency investigation to expedite identification and apprehension of violent criminal offenders (e.g., serial murderers).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 10,000 respondents at an average of one hour per response.

(6) An estimate of the annual total public burden (in hours) associated with the collection: 10,000 total 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, 601 D Street, NW, Suite 1600, Washington, DC 20004.

Dated: October 2, 2001.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 01-25082 Filed 10-4-01; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 28, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin

King at (202) 693-4129 or email: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Assistant Secretary for Policy (ASP).

Type of Review: Revision of a currently approved collection.

Title: National Agricultural Workers Survey (NAWS).

OMB Number: 1225-0044.

Affected Public: Individuals or households and Farms.

Type of Response: Reporting.

Frequency: Annually.

Number of Respondents: 5,500.

Number of Annual Responses: 5,500.

Estimated Time Per Response: 20 minutes to conduct employer interviews and 80 minutes to conduct employee interviews.

Total Burden Hours: 5,840.

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: The NAWS provides data to public and private service programs and data analysis which are used for the planning, implementing and evaluation of farm workers programs. Analysis provides an understanding of the manpower resources available to the U.S. agriculture and the importance of immigrants in the labor market. It is the only national sources of data on the

demographic and employment characteristics of farm workers.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 01-24985 Filed 10-4-01; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut

CT010001 (Mar. 2, 2001)

CT010003 (Mar. 2, 2001)

CT010004 (Mar. 2, 2001)

Rhode Island

RI010001 (Mar. 2, 2001)

RI010002 (Mar. 2, 2001)

RI010005 (Mar. 2, 2001)

Volume II

District of Columbia

DC010001 (Mar. 2, 2001)

DC010003 (Mar. 2, 2001)

Delaware

DE010004 (Mar. 2, 2001)

Maryland

MD010001 (Mar. 2, 2001)
 MD010009 (Mar. 2, 2001)
 MD010021 (Mar. 2, 2001)
 MD010034 (Mar. 2, 2001)
 MD010036 (Mar. 2, 2001)
 MD010037 (Mar. 2, 2001)
 MD010042 (Mar. 2, 2001)
 MD010048 (Mar. 2, 2001)
 MD010056 (Mar. 2, 2001)
 MD010057 (Mar. 2, 2001)
 MD010058 (Mar. 2, 2001)

Pennsylvania

PA010005 (Mar. 2, 2001)
 PA010006 (Mar. 2, 2001)

Virginia

VA010008 (Mar. 2, 2001)
 VA010014 (Mar. 2, 2001)
 VA010048 (Mar. 2, 2001)
 VA010052 (Mar. 2, 2001)
 VA010053 (Mar. 2, 2001)
 VA010058 (Mar. 2, 2001)
 VA010078 (Mar. 2, 2001)
 VA010079 (Mar. 2, 2001)
 VA010092 (Mar. 2, 2001)
 VA010099 (Mar. 2, 2001)

Volume III

Georgia

GA010003 (Mar. 2, 2001)
 GA010085 (Mar. 2, 2001)
 GA010087 (Mar. 2, 2001)

Kentucky

KY010001 (Mar. 2, 2001)
 KY010002 (Mar. 2, 2001)
 KY010003 (Mar. 2, 2001)
 KY010004 (Mar. 2, 2001)
 KY010007 (Mar. 2, 2001)
 KY010025 (Mar. 2, 2001)
 KY010027 (Mar. 2, 2001)
 KY010028 (Mar. 2, 2001)
 KY010029 (Mar. 2, 2001)
 KY010035 (Mar. 2, 2001)
 KY010044 (Mar. 2, 2001)

Tennessee

TN010002 (Mar. 2, 2001)
 TN010061 (Mar. 2, 2001)

Volume IV

Illinois

IL010008 (Mar. 2, 2001)
 IL010009 (Mar. 2, 2001)
 IL010011 (Mar. 2, 2001)
 IL010013 (Mar. 2, 2001)

Michigan

MI010001 (Mar. 2, 2001)
 MI010002 (Mar. 2, 2001)
 MI010003 (Mar. 2, 2001)
 MI010004 (Mar. 2, 2001)
 MI010005 (Mar. 2, 2001)
 MI010016 (Mar. 2, 2001)
 MI010017 (Mar. 2, 2001)
 MI010019 (Mar. 2, 2001)
 MI010027 (Mar. 2, 2001)
 MI010047 (Mar. 2, 2001)
 MI010060 (Mar. 2, 2001)
 MI010062 (Mar. 2, 2001)
 MI010077 (Mar. 2, 2001)
 MI010081 (Mar. 2, 2001)
 MI010082 (Mar. 2, 2001)
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 MI010088 (Mar. 2, 2001)
 MI010099 (Mar. 2, 2001)
 MI010100 (Mar. 2, 2001)
 MI010101 (Mar. 2, 2001)
 MI010105 (Mar. 2, 2001)

Ohio

OH010001 (Mar. 2, 2001)
 OH010002 (Mar. 2, 2001)
 OH010003 (Mar. 2, 2001)
 OH010005 (Mar. 2, 2001)
 OH010006 (Mar. 2, 2001)
 OH010008 (Mar. 2, 2001)
 OH010009 (Mar. 2, 2001)
 OH010013 (Mar. 2, 2001)
 OH010018 (Mar. 2, 2001)
 OH010020 (Mar. 2, 2001)
 OH010023 (Mar. 2, 2001)
 OH010028 (Mar. 2, 2001)
 OH010029 (Mar. 2, 2001)

Volume V

Louisiana

LA010001 (Mar. 2, 2001)
 LA010004 (Mar. 2, 2001)
 LA010005 (Mar. 2, 2001)
 LA010009 (Mar. 2, 2001)
 LA010012 (Mar. 2, 2001)
 LA010014 (Mar. 2, 2001)
 LA010016 (Mar. 2, 2001)
 LA010017 (Mar. 2, 2001)
 LA010018 (Mar. 2, 2001)
 LA010052 (Mar. 2, 2001)
 LA010054 (Mar. 2, 2001)

Missouri

MO010001 (Mar. 2, 2001)
 MO010002 (Mar. 2, 2001)
 MO010004 (Mar. 2, 2001)
 MO010006 (Mar. 2, 2001)
 MO010007 (Mar. 2, 2001)
 MO010009 (Mar. 2, 2001)
 MO010011 (Mar. 2, 2001)
 MO010013 (Mar. 2, 2001)
 MO010015 (Mar. 2, 2001)
 MO010016 (Mar. 2, 2001)
 MO010019 (Mar. 2, 2001)
 MO010050 (Mar. 2, 2001)
 MO010058 (Mar. 2, 2001)
 MO010001 (Mar. 2, 2001)

New Mexico

NM010001 (Mar. 2, 2001)

Volume VI

Colorado

CO010001 (Mar. 2, 2001)
 CO010003 (Mar. 2, 2001)
 CO010018 (Mar. 2, 2001)
 CO010021 (Mar. 2, 2001)
 CO010022 (Mar. 2, 2001)

Idaho

ID010001 (Mar. 2, 2001)
 ID010003 (Mar. 2, 2001)

Oregon

OR010001 (Mar. 2, 2001)
 OR010017 (Mar. 2, 2001)

Volume VII

Arizona

AZ010001 (Mar. 2, 2001)
 AZ010003 (Mar. 2, 2001)
 AZ010004 (Mar. 2, 2001)
 AZ010005 (Mar. 2, 2001)
 AZ010006 (Mar. 2, 2001)
 AZ010007 (Mar. 2, 2001)
 AZ010011 (Mar. 2, 2001)
 AZ010013 (Mar. 2, 2001)
 AZ010014 (Mar. 2, 2001)
 AZ010015 (Mar. 2, 2001)
 AZ010016 (Mar. 2, 2001)
 AZ010017 (Mar. 2, 2001)
 AZ010018 (Mar. 2, 2001)

California

CA010029 (Mar. 2, 2001)

Hawaii

HI010001 (Mar. 2, 2001)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at www.access.gpo.gov/davisbacon. They are also available electronically by subscription to the Davis-Bacon Online Service (<http://davisbacon.fedworld.gov>) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th Day of September 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01-24673 Filed 10-4-01; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The NSF Management Official having responsibility for the DOE/NSF Nuclear Science Advisory Committee (#1176) has determined that renewing this

committee for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for this committee will expire on October 1, 2003, unless it is renewed. For more information, please contact Susanne Bolton, NSF, at 703/292-7488.

Dated: October 2, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01-25093 Filed 10-4-01; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; 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 Committee for Engineering (#1170).

Date/Time: October 24, 2001/8:30 a.m.-5:30 p.m.; October 25, 2001/8:30 a.m.-1 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Elbert L. Marsh, Deputy Assistant Director for Engineering, National Science Foundation, Suite 505, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 292-4609. If you are attending the meeting and need access to the NSF building, please contact Maxine Byrd at 703-292-4601 or at mbyrd@nsf.gov so that your name can be added to the building access list.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: The principal focus of the forthcoming meeting will be on strategic issues, both for the Directorate and the Foundation as a whole. The Committee will also address matters relating to the future of the engineering profession, and engineering education.

Dated: October 2, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01-25095 Filed 10-4-01; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; 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: Committee on Equal Opportunities in Science and Engineering (1173).

Date/Time: October 16, 2001, 8 am-5:30 pm and October 17, 2001, 8 am-3 pm.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: John Wilkinson, Executive Liaison to CEOSE, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Phone (703) 292-8741.

Minutes: May be obtained from the Executive Liaison at the above address.

Purpose of Meeting: To provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

Tuesday, October 16, 2001, 8 am-5:30 pm

8:00 am Breakfast with NSF Staff

8:30 am Welcome; Approval of June 2001

Minutes

8:45 am Report of Executive Council

Liaison

9:00 am CEOSE Discussion of Cross-Cutting Issues and Overview of the Meeting

10:45 am Break

11:00 am Continuation of Discussion of

Cross-Cutting Issues and Future Agenda

12:00 pm Lunch

1:00 pm Programs to Promote Diversity at

Lucent Technologies—Dr. James West

2:00 pm DOE/NSF Partnership to Promote S&E Diversity—Dr. Peter Falera; Update on Building Engineering and Scientific Talent—Dr. Wanda Ward

3:15 pm Break

3:30 pm Committee Discussion

4:00 pm Discussion with the Director,

NSF—Dr. Rita Colwell

4:45 pm Presentation of Advisory

Committee Reports from CEOSE Liaisons

5:30 pm Adjourn for the day

Wednesday, October 17, 2001 8 am-3 pm

8:00 am Breakfast

8:30 am Committee Discussion: Report

Planning for 2002 CEOSE Report

10:30 am Break

11:00 am Discussion with the Deputy

Director, NSF—Dr. Joseph Bordogna

12:00 am Lunch

1:00 pm Disaggregation of Demographic

Data—Dr. Samuel Peng

2:00 pm Committee Discussion: Wrap-up

and Future Directions

3:00 pm Adjourn

Dated: October 2, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01-25094 Filed 10-4-01; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences; Committee of Visitors for the Instrumentation and Facilities Program in the Division of Earth Sciences (1755).

Dates/Time: October 24-26, 2001; 8:30 am-5 pm each day.

Place: Room 770, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open—(see Agenda, below).

Contact Person: Dr. David Lambert, Program Director, Instrumentation and Facilities Program, Division of Earth Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292-8558.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Agenda

Closed: October 24 from 11:00-5:00—To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of the Instrumentation and Facilities Program.

Open: October 24 from 8:30-11—Introductions, charge and general discussion of selection process. October 25 from 8:30-5 & October 26 from 8:30-5—To assess the results of NSF program investments in the Instrumentation and Facilities Program. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

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 (4) and (6) of U.S.C. 552b(c), of the Government in the Sunshine Act.

Dated: October 2, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01-25096 Filed 10-4-01; 8:45 am]

BILLING CODE 7555-01-M

**NUCLEAR REGULATORY
COMMISSION**

[Docket Nos. 50-237 and 50-249]

**Exelon Generation Company, LLC;
Dresden Nuclear Power Station, Units
2 and 3 Exemption****1.0 Background**

The Exelon Generation Company, LLC, (Exelon, or the licensee) is the holder of Facility Operating License Nos. DPR-19 and DPR-25, which authorizes operation of the Dresden Nuclear Power Station (DNPS), Units 2 and 3, respectively. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two boiling water reactors located in Grundy County, Illinois.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, section 50.55a(g)(6)(ii)(A)(2) incorporates American Society of Mechanical Engineers (ASME) Code, Section XI, Table IWB-2500-1. Item B1.12 of ASME code, Section XI, Table IWB-2500-1 requires that all longitudinal reactor pressure vessel (RPV) shell welds be inspected during each ten-year inspection interval. Additionally, item B1.30 requires that the shell-to-flange weld be inspected during each inspection interval.

In its submittal dated June 12, 2001, as supplemented by a letter dated July 23, 2001, the licensee requested an exemption from the ASME Code, Section XI requirements, items B1.12 and B1.30 of Table IWB-2500-1. The licensee requested a one cycle extension of the requirement to inspect the RPV welds for the Dresden Units 2 and 3 per the provisions of 10 CFR 50.55a(a)(3)(ii). Specifically, the licensee concluded that compliance with the specified requirements of this section would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.

Until recently, the licensee intended to use standard inspection techniques on RPV welds during the upcoming (17th) refueling outages for both units. The outages are scheduled for October 2001 and September 2002 for Units 2 and 3, respectively. Using standard equipment, the licensee projects that they would be able to inspect approximately 60 percent of the length of vertical welds.

In order to improve and increase their capability to perform RPV weld examinations, the licensee proposes to implement the AIRIS 21 system. The AIRIS 21 system is a nondestructive examination (NDE) tool developed by IHI Southwest Technologies (ISWT). The licensee proposes to have ISWT install the new system and inspect vertical welds along the lower beltline course as well as the shell-to-flange weld during the 17th refueling outage for both units. Coverage of the lower beltline course is not obtainable using standard inspection techniques. Using the AIRIS 21 system, the licensee anticipates examining 14 of the 18 vertical welds as well as the shell-to-flange weld during the upcoming 17th refueling outage for both units. Approximately 90 percent of the shell-to-flange weld is expected to be examined while 50 to 100 percent of the vertical welds are expected to be examined. The licensee expects to complete examinations for the remaining four vertical welds using the AIRIS 21 system in the 18th refueling outage for both units.

The AIRIS 21 device will require additional refueling bridge support. Therefore, in order to inspect all of the welds required by the ASME Code during the 17th refueling outages, outage time would be increased by 64 hours according to the licensee's estimates. The licensee concludes that this considerable extension in outage time presents undue hardship.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. According to 10 CFR 50.12(a)(2)(iii), special circumstances are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted. The requested scheduler exemption is required to prevent an extended shutdown of the facility for the purpose of conducting RPV inservice examinations. In addition, according to 10 CFR 50.12(a)(2)(v), special circumstances are also present whenever the exemption would provide only temporary relief from the applicable regulation. The requested exemption is only needed for eight

months for Unit 2 and 24 months for Unit 3 to achieve increased inspection coverage without an outage schedule impact.

As described in the staff's safety evaluation dated September 28, 2001, the staff finds that the deferral of the examinations of RPV welds for one cycle will not present undue risk to the public and the AIRIS 21 system is expected to result in a more complete inspection during future outages. The safety evaluation may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room).

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants Exelon an exemption from the requirements of 10 CFR 50.55a(g)(6)(ii)(A)(2) for Dresden Nuclear Power Station, Units 2 and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 49713).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 28th day of September 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01-24999 Filed 10-4-01; 8:45 am]

BILLING CODE 7590-01-P

**SECURITIES AND EXCHANGE
COMMISSION****Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 8, 2001:

A closed meeting will be held on Tuesday, October 9, 2001, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matter at the closed meeting.

The subject matter of the closed meeting scheduled for Tuesday, October 9, 2001, will be:

Institution of an administrative proceeding of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: October 2, 2001.

Jonathan G. Katz,
Secretary.

[FR Doc. 01-25125 Filed 10-2-01; 4:10 pm]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [66 FR 49727, September 28, 2001].

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, October 3, 2001 at 10 a.m.

CHANGE IN THE MEETING: Deletion of Item.

The following item will not be considered at the open meeting scheduled for Wednesday, October 3, 2001: Final Rule Amendments to Broker-Dealer Books and Records Rules 17a-3 and 17a-4 Under the Securities Exchange Act of 1934.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: October 2, 2001.

Jonathan G. Katz,
Secretary.

[FR Doc. 01-25126 Filed 10-2-01; 4:31 pm]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 44874/September 28, 2001]

Securities Exchange Act of 1934; Exemptive Order Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 Issuing Exemptive Relief To Respond to Market Developments

Section 36 of the Securities Exchange Act of 1934 (Exchange Act) authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Following the events of September 11, 2001, trading in the equity and options markets halted for four days. To facilitate the reopening of trading, the Commission, recognizing that purchases by registrants of their own securities can represent an important source of liquidity to maintain fair and orderly markets, used its authority under section 12(k)(2) of the Exchange Act to relax certain regulatory provisions to permit additional flexibility in making such purchases.¹ While there is no longer an emergency and the markets are functioning well, nonetheless, under the current highly unusual circumstances, it continues to be useful to facilitate issuers repurchases to enhance orderly markets. We believe that this exemption providing similar relief is appropriate in the public interest. This exemption, particularly in light of the other provisions of Rule 10b-18 that remain applicable and its limited duration, is consistent with the protection of investors.

Accordingly,

It is Ordered, pursuant to section 36 of the Exchange Act, that, in connection with a Rule 10b-18 purchase² or with a Rule 10b-18 bid that is made during the period covered by this Order by the use of any means

¹ Securities Exchange Act Release No. 44791 (September 14, 2001), Securities Exchange Act Release No. 44827 (September 21, 2001).

² Terms used in this order have the same meaning as those terms used in Exchange Act Rule 10b-18 unless stated otherwise.

or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, an issuer, or an affiliated purchaser of the issuer, shall not be deemed to have violated section 9(a)(2) of the Exchange Act or Rule 10b-5 under the Exchange Act, solely by reason of the time or price at which its Rule 10b-18 bids or Rule 10b-18 purchases are made or the amount of such bids or purchases or the number of brokers or dealers used in connection with such bids or purchases if the issuer or affiliated purchaser of the issuer meets all of the conditions in Rule 10b-18³ with the exception that:

1. The timing condition in paragraph (b)(2) may be satisfied by an issuer whose security has an average daily trading volume (ADTV) value of \$1,000,000 or more and a public float value of \$150 million or more if that issuer effects purchases that (a) do not constitute the opening transaction in the security, and (b) occur up to the ten minutes before the scheduled close of trading on the primary market for such security; and

2. The volume condition of paragraph (b)(4) may be satisfied if the issuer makes all Rule 10b-18 purchases other than block purchases of a reported or exchange traded security in an amount that, when added to the amount of all other Rule 10b-18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or an affiliated purchaser of the issuer on that day, does not exceed 100 percent of the trading volume (excluding the week of September 10, 2001 from the four week calculation) for that security;⁴ and

It is Further Ordered that,

Notwithstanding the pooling-of-interest provisions in the Accounting Principles Board Opinion No. 16, *Business Combinations*, and the related interpretations of the American Institute of Certified Public Accountants,

³ All other conditions of Rule 10b-18 remain in effect, including the timing condition with respect to issuers whose securities do not meet the \$1,000,000 average daily trading volume (ADTV) value and \$150 million public float test stated in paragraph 1 above. ADTV and public float shall be determined in a manner consistent with 17 CFR 242.100. This Order is separate from the Emergency Order issued on September 14, 2001 and extended on September 21, 2001. Securities Exchange Act Release No. 44791 (September 14, 2001); Securities Exchange Act Release No. 44827 (September 21, 2001).

⁴ The four-week trading volume calculation excludes the week of September 10, 2001. For example, if an issuer's Rule 10b-18 purchases occur on October 2, 2001, the four calendar week trading volume calculation should be determined using the calendar weeks beginning on August 27th, September 3rd, September 17th, and September 24th.

consensuses of the Financial Accounting Standards Board's Emerging Issues Task Force, rules and regulations of the Commission and Interpretations by its staff, and other authoritative accounting guidance, acquisitions by registrants of their own equity securities during the period covered by this Order will not affect the availability of pooling-of-interests accounting and, accordingly, a registrant's financial statements will not be misleading or inaccurate solely because the registrant has engaged in such purchases and has accounted for its business combination transactions as a pooling of interests.⁵

This Order shall be effective beginning on October 1, 2001 through October 12, 2001.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24994 Filed 10-4-01; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 44871]

Order Regarding Government Securities Reconciliations

September 28, 2001.

Section 36 of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. In light of the events of September 11, 2001, the Commission has determined to provide broker-dealers with further relief under Exchange Act Rules 15c3-1 and 15c3-3 to facilitate the orderly reconciliation of transactions in government securities. Accordingly,

It is ordered, pursuant to Section 36 of the Exchange Act, that,
Broker-dealers need not consider the days September 24, 2001 through

October 5, 2001, inclusive, as business or calendar days for purposes of taking deductions, when computing net capital under Rule 15c3-1 or for purposes of determining the amount of cash and/or qualified securities required to be maintained in a "Special Reserve Bank Account for the Exclusive Benefit of Customers" in accordance with the formula set forth in Exhibit A to Rule 15c3-3, arising from aged fail transactions in government securities and unresolved reconciliation differences with accounts or clearing corporations or depositories involving government securities.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24980 Filed 10-4-01; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44861; File No. SR-Amex-2001-59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Proposed Rule 324

September 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 7, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt Exchange Rule 324 to require each member not associated with a member organization and each member organization primarily engaged as an agent in executing transactions on the Floor to maintain a detailed, written record of each type of compensation arrangement that it enters into with other members as well as customers.

The text of the proposed rule change is available at the Office of the

Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is implementing examination procedures similar to those previously adopted by the NYSE to review Floor broker activity to determine if a broker is sharing in the profits generated in customer accounts. In connection with these new examination procedures, the Amex is proposing to adopt a rule, similar to NYSE Rule 440I, that would require each member not associated with a member organization and each member organization primarily engaged as an agent in executing transactions on the Floor, to maintain a detailed, written record of each type of compensation arrangement that it enters into with other members as well as all other customers. The Exchange's financial examiners will use these records in conducting reviews to determine if there were possible violations of Section 11(a) of the Act³ or Exchange rules.

The proposed rule would apply to members and member organizations primarily engaged as agents in executing transactions on the Floor of the Exchange. It would specify a type of record, *i.e.*, a record of compensation arrangements, in addition to records to be maintained under Exchange Act Rules 17a-3 and 17a-4.⁴ The proposed rule would exclude the following compensation arrangements from the requirement to maintain a written record:

- (1) Arrangements involving gross compensation of less than \$5,000 per year, and
- (2) Arrangements involving order transmitted solely through the Exchange's electronic order routing system.

⁵ Our authority under Section 36 extends to any provision of the Exchange Act or any rule or regulation thereunder. Regulation S-X was promulgated, in part, under the authority of the Exchange Act. We acknowledge that our action, by necessity, also will affect filings under the other provisions of the securities laws that require filings to be in compliance with Regulation S-X.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78k(a).

⁴ 17 CFR 240.17a-3 and 17 CFR 240.17a-4.

The Exchange is proposing to exclude orders transmitted solely through the Exchange's electronic order routing system because the Exchange believes that the audit trail capabilities of this system prevent trading improprieties by independent Floor brokers. The Exchange also is proposing to exclude "upstairs" (*i.e.*, off the Floor) members and member organizations from the requirement to keep records of compensation arrangements. Independent brokers do not generally have the independent supervisory structures and the formalized internal supervisory oversight that upstairs organizations have since many independent brokers act as sole proprietors with limited customer and product base.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5),⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder,⁸ the proposed rule change has become effective upon filing as its effects a change that: (1) Does not significantly affect the protection of investors or the

public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days from the date of filing, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days before the filing date.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2001-59 and should be submitted by October 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24975 Filed 10-4-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44889; File No. SR-Amex-2001-83]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Amending Exchange Rule 220 Relating to Floor Broker Acceptance of Orders at the Specialist's Post

October 1, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on October 1, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 220 to allow floor brokers to accept orders over telephones at or near the specialist's post.³

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

Section 6. Floor Wires

Rule 220 Communications to and on the Floor

No member shall establish or maintain any telephonic or electronic communication between the Floor and any other location, or between locations on the Floor, without the prior written approval of the Exchange.

Commentary

.01 With the approval of the Exchange, a member or member organization may establish and maintain a telephone line which permits a non-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange previously filed notice of these amendments on September 6, 2001. However, that notice did not become immediately operative. See SR-Amex-2001-73, Release No. 34-44810 (September 18, 2001), 66 FR 49053 (September 25, 2001). In this Notice (SR-Amex-2001-83), the Exchange makes identical amendments and requests that they be immediately operative on October 1, 2001. Telephone conversation with Claire McGrath, Vice-President and Deputy General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, SEC (October 1, 2001).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 200.30-3(a)(12).

member located off the Floor to communicate with such member or member organization on the Floor. *Except as provided in Commentary .03 below, [T]he Exchange will not approve the use of a portable telephone or other portable communication device on the Floor which would permit direct voice communication between members and non-members.*

.02 No change.

.03 *With the approval of the Exchange, floor brokers may use wireless telephone devices to receive off-floor orders from any source (i.e., members, broker-dealers, non-broker-dealers, or public customers) at the specialist's post where the security is traded. The following requirements and conditions shall apply to the floor broker's use of telephone services at the specialist's post:*

(1) *Only those quotations that have been publicly disseminated pursuant to SEC Rule 11Ac1-1 may be provided over telephones at or near the specialist's post.*

(2) *Floor Brokers may only receive orders over the telephone lines at the specialist post or the wireless telephone device during outgoing telephone calls initiated by the floor brokers.*

(3) *Only those floor brokers properly qualified in accordance with applicable rules and regulations may accept orders from public customers pursuant to this Commentary*

.04 [.03] No change.

.05 [.04] No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed and comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Exchange rules and policies currently prohibit floor brokers from taking orders from off-floor at the specialist's post and require off-floor orders to be received at the floor broker's booth. The Exchange believes that this prohibition, at times,

impacts the fast and efficient routing and execution of orders at the Exchange. Therefore, the Exchange is now proposing to amend Exchange Rule 220 regarding communications to and on the floor to allow floor brokers to use telephones at or near the specialist's post or Exchange-provided wireless telephone devices to receive off-floor orders from any source (i.e., members, broker-dealers, non-broker-dealers or public customers). However, such orders would only be permitted to be received during outgoing conversations initiated by the floor broker. The Exchange notes that the wireless telephone devices currently in use by the Exchange would need to be reconfigured to allow outgoing phone calls to be made. Members and their employees would continue to be prohibited from using personal wireless voice communication devices on the trading floor.

In addition, the following requirements and conditions would apply to the floor brokers' use of telephone services at or near the specialist's post: (i) Only those quotations that have been publicly disseminated pursuant to SEC Rule 11Ac1-1 may be provided over telephones at or near the specialist's post; (ii) floor brokers may only receive orders over the telephones during outgoing telephone calls that they have initiated; and (iii) only those floor brokers properly qualified in accordance with applicable rules and regulations may accept orders from public customers.⁴ The Exchange's policy regarding the use of time clocks at the specialist post would also be amended to allow floor brokers receiving orders over the telephone at or near a specialist post to use the time clock to stamp such order.

The Exchange intends to police compliance with the conditions applicable to use of telephones by floor brokers for the receipt of orders at the specialist's post through oversight and review of complaints from members at the trading posts as well as observations of floor officials and Exchange personnel.

The Exchange believes that the use of the telephones by floor brokers to receive off-floor orders would provide more efficient order routing and execution, increase the speed of execution, and satisfy member and non-

member customers in an increasingly competitive environment.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁵ in general and furthers the objectives of section 6(b)(5)⁶ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange also believes that the proposed rule change is consistent with section 6(c)(3)(B) of the Act.⁷ Under this section, it is the Exchange's responsibility to prescribe standards for training, experience and competence for persons associated with Exchange members and member organizations. The Exchange believes that this proposed rule change will establish an additional mechanism for the administration of the education program, which will enable registered persons to satisfy their continuing education obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and subparagraph (f)(6) of Rule 19b-4⁹ thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission

⁴ For example, floor brokers accepting orders from public customers are required to be qualified pursuant to Exchange Rule 341. Any floor broker accepting an order from a public customer is required to be Series 7 qualified and registered with the Exchange by a member organization approved to conduct non-member customer business.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(c)(3)(B).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission notes that under rule 19b-4(f)(6)(iii), the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and designate that the proposed rule become operative on October 1, 2001 due to the emergency situation caused by the attack on and destruction of the World Trade Center on September 11, 2001 and the resulting limitations on the Exchange's trading floor systems including its wired telephone lines.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and designate the proposal immediately operative on October 1, 2001. Accelerating the operative date and waiving the pre-filing requirement will aid the Exchange in overcoming the damage caused to its telephone lines by the destruction of the World Trade Center on September 11, 2001. For this reason, the Commission finds good cause to designate that the proposal become operative on October 1, 2001.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than that those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2001-83 and should be submitted by October 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24995 Filed 10-4-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44862; File No. SR-CBOE-2001-33]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating To Step-Up From the Designated Primary Market Maker's Autoquote Price

September 27, 2001.

On June 14, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder.² On August 16, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change would clarify, for purposes of automatic step-up, that the term "Exchange's best bid or offer" would refer to the Designated Primary Market Maker's ("DPM") Autoquote price or the price from the DPM's proprietary automated quotation updating system.

The proposed rule change was published for comment in the *Federal Register* on August 23, 2001.⁴ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange⁵ and, in particular, the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁷ because, by limiting the Exchange's best bid or offer for purposes of the step-up feature of the Exchange's Retail Automatic Execution System to the Autoquote price as established by the DPM or the DPM's proprietary automated quotation updating system, the proposal should ensure that the step-up feature uses a quote that more accurately reflects the prevailing market. Therefore, the Commission finds the proposed rule change is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CBOE-2001-33) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24974 Filed 10-4-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44885; File No. SR-CBOE-2001-51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Modifying Payment of Exchange Dues From Quarterly to Monthly

September 28, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 20, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹⁰ 15 U.S.C. 78s(b)(1).

¹¹ 17 CFR 240.19b-4.

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78(b)(1).

¹² 17 CFR 240.19b-4.

³ See letter to Debby Flynn, Assistant Director, Division of Market Regulation, Commission, from Steve Youhn, Attorney, CBOE, dated August 15, 2001 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 44718 (August 17, 2001), 66 FR 44391.

III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to change its rules and fee schedule to authorize monthly, rather than quarterly, billing and collection of membership dues.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to bill and collect Exchange membership dues more equitably and fairly by doing it on a monthly, rather than quarterly, basis. The Exchange represents that it has been its recent experience that collecting membership dues only four times a year can cause the dues to be imposed inequitably upon members who lease their seats. If a quarterly dues payment comes due at a time when the member is between lessees and has not yet found someone new to lease the seat, the member ends up having to pay three months worth of dues for a seat he is not even using. The Exchange believes that monthly, instead of quarterly, billing will minimize such occurrences, and increase the likelihood that the member who actually uses each seat will be the one paying the dues. This proposed change will take effect on October 1, 2001.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Section 6(b)(4),⁴ in particular, because it is designed to provide for the equitable

allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and Rule 19b-4(f)(2) thereunder.⁶ Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No.

SR-CBOE-2001-51 and should be submitted by October 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24978 Filed 10-4-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44884; File No. SR-DTC-2001-12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Distribution of Notices of Participants and Pledges

September 28, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 2, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change permits DTC to serve notices on participants and pledgees electronically and states service is deemed given at the time the notices are made available or transmitted to such participants and pledgees. In addition, the proposed rule change discontinues the practice of hard-copy distribution of notices to participant boxes maintained by DTC on its premises. Subject to regulatory approval, these changes will be effective October 1, 2001.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ 17 CFR 200.30-3(a)(12).

may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Historically, DTC provided its participants and pledgees (hereinafter, collectively referred to as "participants") with notices in hard-copy format only. Beginning in 1997, DTC also made such notices, most typically known as Important Notices, available electronically on its internet website, www.DTC.org. This site maintains all DTC Important Notices issued over the most recent two complete with scanned forms and attachments.

In addition to the website, Important Notices issued over the most recent thirty day period have also been available electronically in the IMPP function on DTC's participant terminal system ("PTS") although forms and attachments to these notices are viewable only on DTC's website.

DTC and its participants have now gained three years of experience with the electronic delivery of Important Notices over the internet, a delivery system that has helped DTC provide for the prompt, efficient, and time distribution of important information. According, to further automate its services and reduce the inefficiencies and costs associated with the manual production of physical documents, on October 1, 2001, DTC will discontinue the practice of hard-copy distribution of notices to participant boxes maintained by DTC on its premises.³

DTC will continue to provide participants with Important Notices electronically, at this time via the DTC's internet website and PTS. DTC's internet website will also include a no fee Important notice subscription service, to be initiated prior to the implementation of the proposed rule change. This new service will send all registered participants and non-participants an e-mail alert when DTC Important Notices are posted to the website. The proposed rule change will still permit DTC to alternatively serve notices on participants via direct delivery or U.S. mail delivery.

Specifically, the proposed rule change will now provide that any notice from DTC to a participant shall be sufficiently served if the notice is in writing and is electronically made available or transmitted to a participant by any means normally employed by DTC for the delivery of electronic communications to such participant. Alternatively, any non-electronic notice shall be sufficiently served on a participant if it is in writing and is delivered or mailed to the participant's office address. Any notice, if made available or transmitted electronically shall be deemed to have been given, respectively, at the time of availability or transmission. Any notice, if delivered or mailed shall be deemed to have been given, respectively, at the time of delivery or when deposited in the United States Postal Service with postage thereon prepaid.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁴ and the rules and regulations thereunder applicable to DTC since the proposed rule change will provide participants with more immediate access to DTC notices and alleviates current operational distribution inefficiencies. In addition, DTC states that the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because all of DTC's risk management controls will remain in effect.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was developed in response to an ongoing effort by DTC to automate processing services that are now handled manually. The proposed rule change was developed through discussions with participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with

the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).⁵ Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. By replacing the practice of hard-copy distribution of notices to participants with electronic distribution, DTC is further automating its operations which should help to perfect the national clearance and settlement system.

DTC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day of the publication of the notice of filing because accelerated approval will permit DTC to begin distributing electronic notices to its participants on the planned implementation date of October 1, 2001.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-2001-12 and should be submitted by October 26, 2001.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (File No. SR-

² The Commission has modified the text of the summaries prepared by DTC.

³ In calendar year 2000 alone, DTC delivered approximately 3,000 Important Notices in hard-copy format to participants, printing a total of approximately 17,525,400 pages.

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 78s(b)(2).

DTC-2001-12) 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. 01-24992 Filed 10-4-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44886; File No. SR-NYSE-2001-37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through January 11, 2002

September 28, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 26, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend, until January 11, 2002, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which amendments were approved by the Commission on a pilot basis (the "Pilot") on June 4, 1999.³ The Pilot was subsequently amended on March 30, 2001.⁴

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.⁵ Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of "broadly based" under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.⁶ ON March 30, 2001 the Commission approved the 2000 Extension Request on a pilot basis until September 30, 2001.⁷

The Exchange proposes to further extend the effectiveness of the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that an Exchange have rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating

transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ to Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before September 30, 2001, in order to allow the Pilot to continue in effect on an uninterrupted basis.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative as of the date of this order through January 11, 2002. The extension of the Pilot will

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-2.

³ Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 2001).

⁴ Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) ("2000 Extension Request").

⁵ See Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000).

⁶ Securities Exchange Act Releases Nos. 43329 (October 2, 2000), 65 FR 5883 (October 2, 2000); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001).

⁷ See note 4 *supra*.

⁸ 15 U.S.C. 78f(b)(5).

provide the Commission with additional time to review and evaluate the Extension Proposal.

The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The Commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of "broadly based" stock option plans. The proposed rule change merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself. The Commission believes that the Pilot should be extended immediately not only to prevent confusion but also to allow the Commission, the Exchange and other market participants to continue to consider the issues involved.¹⁴

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative as of the date of this order through January 11, 2002. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR-NYSE-2001-37 and should be submitted by October 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-24979 Filed 10-4-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44872; File No. SR-Phlx-99-52]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Adopting Rule 51, Enforcement of Capital Funding Fee

September 28, 2001.

On December 6, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt Phlx Rule 51, Enforcement of the Capital Funding Fee. New Rule 51 ("Rule") permits the Exchange to take certain specified measures if an owner of a membership fails to pay (or have paid on its behalf) any capital funding fee imposed by the Exchange when due. The Phlx filed an amendment to the proposal on August 9, 2001.³

The Rule specifies what enforcement action may be taken against an owner for failure to pay any capital funding fee

imposed by the Exchange. The Exchange represented that a new rule is required because existing Exchange rules do not comprehensively address situations in which owners, as opposed to members or member organizations, are required to pay the Exchange any fees. The Phlx Board determined that the enforcement mechanisms outlined in the Rule were necessary to effectuate the Exchange's capital funding fee, a central aspect of the Exchange's capital plan, for the continued viability and competitiveness of the Exchange.

The Rule delineates the remedies that shall be taken by the Board if the capital funding fee is not paid. The Rule allows for a variety of remedies ranging from the imposition of a late fee to reversion and sale by the Exchange of the equitable title to a membership. The remedies are set forth in such a way as to apply the less onerous remedies (*i.e.*, like fees) first and the more serious remedies (*i.e.*, suspension of right to trade or lease and reversion of membership) only after the Exchange has not received payment within 90 days after the date of the original invoice (or such longer period for which a lease agreement is in effect as a result of the election by a lessee to continue paying the capital funding fee). By allowing this graduated scale of remedies, the owners are put on notice as to what remedies will be imposed if payment is not received in a timely manner, with the more serious remedies being applied after a longer period of time. In addition, the Rule delineates the Board's responsibilities and authority for handling instances in which an owner fails to pay the capital funding fee when due. The Rule is designed to protect innocent lessees from being unexpectedly dispossessed from their memberships and trading rights in the event of a nonpayment by their lessors. By electing to pay the capital funding fee on behalf of an owner, the lessee may continue trading under his/her existing membership for up to three months. At the end of this period, or in the event that the lessee elects not to pay the fee on behalf of the lessor, the lessee may apply for temporary trading privileges.

The proposed rule change, as amended, was published for comment in the *Federal Register* on August 29, 2001.⁴ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations under the Act

¹⁴ The Commission notes that on December 5, 2000 the Nasdaq Stock Market, Inc. ("Nasdaq") solicited comment from its members and investors on the NYSE Task Force's dilution standard. Nasdaq received approximately 275 comment letters on the NYSE dilution proposal, which it is currently considering.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Cynthia Hoekstra, Counsel, Phlx, to Nancy Sanow, Assistant Director, Commission, dated August 8, 2001 ("Amendment No. 1"). In Amendment No. 1 the Phlx represented that the Rule complies with Delaware corporate law, Pennsylvania contract law, and the Exchange's Certificate of Incorporation, by-laws, and rules. In addition, the Phlx modified the timing of the enforcement procedures for failure to pay the capital funding fee and included a provision for equitable reversion.

⁴ See Securities Exchange Act Release No. 44733 (August 22, 2001), 66 FR 45716.

applicable to a national securities exchange⁵ and, in particular, the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with the requirement of Section 6(b)(5)⁷ because it is designed to promote just and equitable principles of trade and to protect investors and the public interest by providing for enforcement action in the event that an owner fails to pay capital funding fee. The proposed rule change is also consistent with Section 6(b)(5) of the Act⁸ because it enables lessees to continue trading on the Exchange even when their respective lessors fail to pay fees owed to the Exchange when due.

The Commission is not required under Section 19(b)(2) of the Act⁹ to find that a proposed rule change by a self-regulatory organization is lawful under state corporation law; in approving this proposal, the Commission is relying on the Phlx's representation that it has the general power under applicable provisions of Delaware law to adopt the Rule. The Commission is also relying on the Phlx's representations that the Rule is permissible under Pennsylvania contract law. The Commission has not independently evaluated the accuracy of Phlx's representations regarding Delaware or Pennsylvania law.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change, as amended, (SR-Phlx-99-52) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,¹¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24976 Filed 10-4-01; 8:45 am]

BILLING CODE 8010-01-M

⁵ In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44887; File No. SR-Phlx-2001-91]

Self-Regulatory Organizations, Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Facilitate the Orderly Resumption of Trading of Non-Phlx Amex Options on the Amex Facility in New York

September 28, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 28, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule exchange.

I. Self-Regulatory Organization's Statement of the Terms and Substance of the Proposed Rule Change

As part of the process to return American Stock Exchange LLC ("Amex") option products to its facility in New York,³ and in order to facilitate the orderly transition of non-Phlx Amex options⁴ back to the Amex, the Exchange proposes to adopt two temporary rules. First Phlx proposes to allow Exchange customers⁵ to cancel

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On September 11, 2001, the Amex suffered physical damage to its New York facility following the terrorist attack on the World Trade Center. In addition, the large area surrounding the Amex was generally inaccessible due to rescue and clean-up efforts, and many basic services (such as electricity, water and communications lines) were not reestablished following the collapse of various buildings and ensuing fires. As an accommodation to the Amex, the Phlx listed certain "non-Phlx Amex options" as defined below, and offered to provide access to its options trading facilities, operations, technology and personnel to the Amex and Amex members, on a temporary basis, in order to facilitate an orderly return to national market system trading in listed equity options and index options by Amex members ("Temporary Arrangement"). The Commission approved the Temporary Arrangement on September 17, 2001. See Securities Exchange Act Release No. 44802 (September 17, 2001) (File Nos. SR-Amex-2001-80, SR-Phlx-2001-86) ("Order").

⁴ Non-Phlx Amex options are defined, as of the close of trading on September 10, 2001, as (a) equity options trading only on the Amex, (b) equity options traded on the Amex and another options exchange, but not the Phlx, and (c) index options traded only on the Amex.

⁵ For purposes of this proposal, "Exchange customers" means those Phlx and/or Amex

limit orders currently residing on Exchange's electronic limit order book after the close of trading on the Phlx on the trading day before the non-Phlx Amex options return to the Amex trading floor. Second, Phlx proposes a temporary rule that would require that trading in certain securities (*i.e.*, non-Phlx Amex options) be terminated at the time that the Temporary Arrangement is terminated (the "Termination Time").

Finally, the Phlx proposes to clarify that the temporary rules describe in the Order will no longer be effective and Amex Temporary Access Persons ("TAPs")⁶ will no longer have access to the Phlx options trading facilities, operations, technology and personnel, as of the Termination Time. In this regard, Amex must submit written notification to the Exchange's Membership Services Department de-registering the Amex TAPs and clerks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements:

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Phlx, the purpose of the proposed rule change is to facilitate the orderly resumption of trading of non-Phlx Amex options of the Amex facility in New York following their temporary listing on the Phlx facility, which was necessitated by the September 11, 2001 terrorist attacks on the World Trade Center.

Specifically, pursuant to the Order, the Phlx temporarily certified and listed, and certain Phlx specialists were granted temporary trading privileges, in non-Phlx Amex options. Upon the

members that have represented limit orders in non-Phlx Amex options currently residing on the Exchange's electronic limit order book.

⁶ See Order, note 3, *supra*. Certain provisions in the agreement between the Phlx and the Amex concerning the Temporary Arrangement, such as limitation of liability; delegation of regulatory and enforcement jurisdiction, payment of transaction fees, and arbitration provisions, will continue to be in effect after the Termination Time.

Termination Time, non-Phlx Amex options will no longer be listed or traded on the Phlx. Therefore, the Phlx proposes a temporary rule to allow Exchange customers to cancel, after the close of trading, as described below, electronic limit orders in non-Phlx Amex options residing on the Phlx limit order book as of the Termination Time. Upon notification by the Amex that non-Phlx Amex options will resume trading on the Amex facility in New York, the Phlx would allow Exchange customers to cancel limit order residing on the Exchange's electronic limit order book as of the close of trading on the day of Termination Time.⁷ Such cancellations would be required to take place between the hours of 4:15 p.m. and 5:30 p.m. Eastern Time on the trading day immediately preceding the date on which the Amex resumes trading on the Amex facility in New York. The Exchange anticipates that the cancellations will take place on Friday, September 28, 2001, and that the Amex will resume trading on its New York facility on Monday, October 1, 2001. Normally, cancellations, like other order types, are not permitted after the close of trading.

Orders in non-Phlx Amex options that are not cancelled by 5:30 p.m. Eastern time on the trading day immediately preceding the date on which the Amex resumes trading on the Amex facility in New York would be removed from the Phlx limit order book. This includes electronic orders delivered to the limit order book via the AUTOM system or via the Exchange's Floor Broker Order Entry System. These electronic orders will be removed by the Exchange. In addition, manual orders placed on the specialist's physical ticket limit order book, if any, will be removed by the specialist unit.

In addition, the Exchange proposes to adopt a temporary rule that would require trading in certain securities (*i.e.*, non-Phlx Amex options) to be terminated at the Termination Time. The Exchange believes that this temporary rule would satisfy the requirements of Rule 12d2-2(b) under the Act,⁸ which provides that a national

⁷ Notice of the time period within which Exchange customers may cancel orders for non-Phlx Amex options would be provided prior to opening of trading on the day of the Termination Time as follows: (1) Via email to Exchange customers; (2) via memorandum to be distributed on the Exchange's Options Floor to Phlx members and to Amex TAPs; (3) via electronic message to Exchange customers over the Exchange's Automated Options Market ("AUTOM") System; and (4) posted on the Exchange's web site. Actual receipt of such notice by Exchange customers shall not be pre-condition to the removal of limit orders are not canceled at or 5:30 p.m. on the day of Termination Time.

⁸ 17 CFR 240.12d2-2(b).

securities exchange (*i.e.*, the Phlx) may strike a security from listing and registration thereon if (i) trading in such security has been terminated pursuant to a rule of such exchange requiring such termination whenever the security is admitted to trading on another exchange; and (ii) listing and registration of such security has become effective on such other exchange. The Phlx's certification of the non-Phlx Amex options was pursuant to a temporary rule that terminates at the Termination Time, and thus, requires termination of trading of non-Phlx Amex options on the Exchange.

Finally, the Phlx proposes to clarify that the temporary rules described in the Order will no longer be effective, and Amex TAPs⁹ will no longer have access to the Phlx options trading facilities, operations, technology and personnel, as of the Termination Time. In this regard, Amex must de-register the Amex TAPs by submitting written notification to the Exchange's Membership Services Department.

2. Basis

For these reasons, the Phlx believes that the proposed rule change is consistent with Section 6 of the Act,¹⁰ in general, and with Section 6(b)(5) of the Act,¹¹ specifically, because it is designed to promote just and equitable principles of trade, and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and the national market system, and, in general, protect investors and the public interest by facilitating the orderly resumption of trading of non-Phlx Amex options on the Amex facility in New York following their temporary listing and trading on the Phlx facility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

⁹ See Order, note 3, *supra*.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of Phlx. All submissions should refer to File No. SR-Phlx-2001-91 and should be submitted by October 26, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission notes that the proposed rule change was submitted in response to the emergency situation that resulted from the September 11, 2001 attacks on the World Trade Center in New York City. As a result of the attacks, the Amex facilities were damaged and could not be opened when the U.S. markets reopened on September 17, 2001. To accommodate the opening of trading of Amex options and to accommodate trading by Amex members, the Phlx and Amex submitted temporary rules, which the Commission approved on September 17, 2001.¹²

The Commission now understands that the Amex facility has been substantially restored and is scheduled to be open for trading on October 1, 2001. Accordingly, Phlx proposes to terminate trading in non-Phlx Amex options as of the close of trading on the day before trading opens on the Amex's New York facility, which is anticipated to be September 28, 2001. In addition, Phlx proposes to permit Exchange customers to cancel orders that may be on the Phlx limit order book when trading closes on the trading day before trading opens on the Amex New York facility.

¹² See Order, note 3 *supra*.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that Exchange customers should be provided the opportunity to cancel orders that remain on the Phlx limit order book before the Exchange or Phlx specialist cancels the orders for them. The Commission notes that when the Amex facility reopens, non-Phlx Amex options will not longer be traded on the Phlx. Thus, the Commission believes that it is appropriate to allow Exchange customers to decide how they want their orders that remain on the Phlx limit order book handled. Further, because the Exchange will no longer trade non-Phlx Amex options, the Commission believes that it is reasonable for the exchange or Phlx specialist to cancel those remaining orders that are not canceled by the Exchange customer.

The Commission also finds that the Phlx proposal to terminate trading in non-Phlx Amex options upon the Amex's reopening to be consistent with the Act. As noted above, the Phlx listed the non-Phlx Amex options as a temporary measure to help address the emergency situation that arose from Amex's inability to reopen its New York facility following the attacks on, and resulting collapse of, the World Trade Center.¹⁵

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date

¹³ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ The Commission notes that this temporary rule does not restrict Phlx's ability to list non-Phlx Amex options at any time. In the Commission's view, the temporary Phlx rule requiring termination of trading of non-Phlx Amex options as of the Termination Time is appropriate in light of the emergency situation that necessitated the temporary listing of these options on the Phlx and, under these circumstances, is consistent with Rule 19c-5 under the Exchange Act. 17 CFR 240.19c-5.

of publication of the notice of filing in the **Federal Register**. The Commission believes that it is necessary to approve the proposed rule change on an accelerated basis to further facilitate the Temporary Arrangement.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule changes (SR-Phlx-2001-91) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24977 Filed 10-4-01; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

President's Commission To Strengthen Social Security

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of meeting.

DATES: October 18, 2001 10 a.m.-3 p.m.

ADDRESSES: Washington, DC—Venue to be determined. Due to unforeseen circumstances the venue has not been identified to date. This information will be published in the **Federal Register** and posted at www.CSSS.gov as soon as it is available.

SUPPLEMENTARY INFORMATION: *Type of meeting:* The meeting will be open to the public between 10 a.m. and 3 p.m., with a break for lunch between Noon and 1 p.m.

Purpose: This is the fourth deliberative meeting of the Commission. No public testimony will be heard at this meeting. However, interested parties are invited to attend the meeting.

Agenda: The Commission will meet commencing Thursday, October 18, at 10 a.m. and ending at 3 p.m., with a break for lunch between Noon and 1 p.m. A series of panels will present testimony to members of the Commission. Panelists will include young Americans, academics, and technical experts.

Future Meeting Dates: November 9, 2001 (Washington, DC; location to be determined). Records are being kept of all Commission proceedings that are subject to public release under the Federal Advisory Committee Act and are available for public inspection at the Commission's office at the address below. Documents such as meeting

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

announcements, agendas, transcripts, minutes, and Commission reports will be available on the Commission's web page. Anyone requiring information regarding the Commission should contact Commission staff by:

- Internet at <http://www.CSSS.gov>;
- Mail addressed to President's Commission to Strengthen Social Security, 734 Jackson Place, NW, Washington, DC, 20503;
- Telephone at (202) 343-1255;
- E-mail to Comments@CSSS.gov.

Dated: September 28, 2001.

Michael A. Anzick,
Designated Federal Officer.

[FR Doc. 01-24944 Filed 10-4-01; 8:45 am]

BILLING CODE 4191-02-P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Computer Matching Program Social Security Administration (SSA) and Immigration and Naturalization Service (INS)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Government Affairs of the Senate, the Committee on Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 597-0841, or writing to the Associate Commissioner for Program Support, 2-Q-16 Operations Bldg, 6401 Security Boulevard, Baltimore, MD 21235.

All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1998 (Pub. L. 100-503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in

which computer matching involving records of Federal and State agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

- (1) Negotiate written agreements with the other agency or agencies participating in the matching programs;
- (2) Obtain the Data Integrity Board's approval of the match agreements.
- (3) Furnish detailed reports about matching programs to Congress and OMB;
- (4) Notify applicants and beneficiaries that their records are subject to matching; and
- (5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: September 28, 2001.

Glenna Donnelly,

Acting Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) with the Immigration and Naturalization Service (INS)

Participating Agencies

SSA and INS.

Purpose of the Matching Program

The purpose of this matching program is to establish conditions under which INS agrees to the disclosure of information regarding certain aliens who may, as a result of their current and planned absences from the United States, be subject to nonpayment of benefits in programs administered by SSA. The disclosure will provide SSA with information useful in determining claim and benefit status under both title II and title XVI of the Social Security Act governing Social Security Retirement, Survivors and Disability Insurance benefits, and Supplemental

Security Income, as certain persons who are outside the United States or similarly lack appropriate statutorily specified residency and citizenship/alienage status, may not be paid benefits under specific statutory provisions of those titles.

Authority for Conducting the Match:

This matching operation is carried out under the authority of sections 202(n), 1611(f), 1614(a)(1), 1631(e)(1)(B) of the Social Security Act, 42 U.S.C. 402(n), 1382(f), 1382c(a)(1), 1383(e)(1)(B), 1383(f) and 8 U.S.C. § 1611 and 1612; and section 237(a) of the Immigration and Nationality Act.

Categories of Records and Individuals Covered by The Match:

INS will disclose to SSA two data files as described below:

1. Aliens Who Leave the United States Voluntarily

INS data on aliens leaving the United States voluntarily from INS's computer linked information management system will be matched with SSA's Master Files of Social Security Number Holders and SSN Applications (Numident Alpha-Index) (SSA/OSR 60 0058). SSA will next match records of persons whose SSNs are verified against SSA's SSR system, (SSA OSR 60-0103), in order to identify aliens potentially subject to suspension of SSI monthly SSI benefit payments under title XVI of the Act due to absence from the United States of 30 consecutive days or more.

2. Aliens Who Are Deported From the United States

INS will provide SSA with a file drawn from the INS Deportable Alien Control System (DACS) including the SSNs (if available) of aliens who have been deported from the United States under specified provisions as described in 202(n)(1) of the Social Security Act, and who, therefore, may be subject to nonpayment of social security benefits under title II of the Social Security Act (in some instances along with their dependents or survivors who are outside of the United States.) This deportee file will also contain records of individuals who may be ineligible for SSI benefits under title XVI of the Social Security Act as a result of their status as deportees given certain residency and/or alien citizenship requirements for eligibility regarding that title. SSA will match the records provided by INS against SSA's Master Files of Social Security Numbers and SSN Applications (SSA/OSR 60-0058); the Master Beneficiary Record (MBR) (SSA/

OSR 60-0090); and the SSR (SSA/OSR 60-0103).

Inclusive Dates of the Match:

The matching agreement for this program shall become effective no sooner than 40 days after notice of the matching program is sent to Congress and the Office of Management and Budget (OMB) or 30 days after publication of this notice in the **Federal Register** whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 01-24990 Filed 10-4-01; 8:45 am]

BILLING CODE 4191-02-M

DEPARTMENT OF STATE

Office of the Coordinator for Counterterrorism

[Public Notice 3795]

Redesignation of Foreign Terrorist Organization

AGENCY: Department of State.

ACTION: Redesignation of foreign terrorist organizations.

Pursuant to Section 219 of the Immigration and Nationality Act ("INA"), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996), the Secretary of State hereby redesignates, effective October 5, 2001, the following organizations as foreign terrorist organizations:

Abu Nidal Organization

Also known as ANO
Also known as Black September
Also known as the Fatah Revolutionary Council
Also known as the Arab Revolutionary Council
Also known as the Arab Revolutionary Brigades
Also known as the Revolutionary Organization of Socialist Muslims

Abu Sayyaf Group

Also known as Al Harakat Al Islamiyya

Armed Islamic Group

Also known as GIA
Also known as Groupement Islamique Arme
Also known as Al-Jama'ah al-Islamiyah al-Musallah

Aum Shinrikyo

Also known as Aleph
 Also known as Aum Supreme Truth
 Also known as A.I.C. Sogo Kenkyusho
 Also known as A.I.C. Comprehensive
 Research Institute

Basque Fatherland and Liberty

Also known as Euzkadi Ta Askatasuna
 Also known as ETA

Gama'a al-Islamiyya

Also known as the Islamic Group
 Also known as IG
 Also known as al-Gama'at
 Also known as Islamic Gama'at
 Also known as Egyptian al-Gama'at al-
 Islamiyya
 Also known as GI

Hamas

Also known as the Islamic Resistance
 Movement
 Also known as Harakat al-Muqawama
 al-Islamiya
 Also known as Students of Ayyash
 Also known as Students of the Engineer
 Also known as Yahya Ayyash Units
 Also known as Izz Al-Din Al-Qassim
 Brigades
 Also known as Izz Al-Din Al-Qassim
 Forces
 Also known as Izz Al-Din Al-Qassim
 Battalions
 Also known as Izz al-Din Al Qassam
 Brigades
 Also known as Izz al-Din Al Qassam
 Forces
 Also known as Izz al-Din Al Qassam
 Battalions

Harakat ul-Mujahideen

Also known as HUM
 Also known as Harakat ul-Ansar
 Also known as HUA

Hizballah

Also known as the Party of God
 Also known as Islamic Jihad
 Also known as Islamic Jihad
 Organization
 Also known as Revolutionary Justice
 Organization
 Also known as Organization of the
 Oppressed on Earth
 Also known as Islamic Jihad for the
 Liberation of Palestine
 Also known as Organization of Right
 Against Wrong
 Also known as Ansar Allah
 Also known as Followers of the Prophet
 Muhammed

al-Jihad

Also known as Egyptian al-Jihad
 Also known as New Jihad
 Also known as Egyptian Islamic Jihad
 Also known as Jihad Group

Kahane Chai

Also known as Kach

Also known as Kahane Lives
 Also known as the Kfar Tapuah Fund
 Also known as The Judean Voice
 Also known as The Judean Legion
 Also known as The Way of the Torah
 Also known as The Yeshiva of the
 Jewish Idea

Also known as the Repression of
 Traitors

Also known as Dikuy Bogdim
 Also known as DOV
 Also known as the State of Judea
 Also known as the Committee for the
 Safety of the Roads
 Also known as the Sword of David
 Also known as Judea Police
 Also known as Forefront of the Idea
 Also known as The Qomemiyut
 Movement

and
 Also known as KOACH

Kurdistan Workers' Party

Also known as the PKK
 Also known as Partiya Karkeran
 Kurdistan
 Also known as the People's Defense
 Force
 Also known as Halu Mesru Savunma
 Kuvveti (HSK)

Liberation Tigers of Tamil Eelam

Also known as LTTE
 Also known as Tamil Tigers
 Also known as Ellalan Force

Mujahedin-e Khalq Organization

Also known as MEK
 Also known as MKO
 Also known as Mujahedin-e Khalq
 Also known as People's Mujahedin
 Organization of Iran
 Also known as PMOI
 Also known as Organization of the
 People's Holy Warriors of Iran
 Also known as Sazeman-e Mujahedin-e
 Khalq-e Iran
 Also known as National Council of
 Resistance
 Also known as NCR
 Also known as National Council of
 Resistance of Iran
 Also known as NCRI
 Also known as the National Liberation
 Army of Iran
 Also known as NLA

National Liberation Army

Also known as the ELN,
 Also known as Ejercito de Liberacion
 Nacional

Palestine Islamic Jihad-Shaqaqi Faction

Also known as PIJ-Shaqaqi Faction
 Also known as PIJ-Shallah Faction
 Also known as Palestinian Islamic Jihad
 Also known as PIJ
 Also known as Islamic Jihad of Palestine
 Also known as Islamic Jihad in
 Palestine

Also known as Abu Ghunaym Squad of
 the Hizballah Bayt Al-Maqdis
 Also known as the Al-Quds Squads
 Also known as the Al-Quds Brigades
 Also known as Saraya Al-Quds
 Also known as Al-Awdah Brigades

*Palestine Liberation Front-Abu Abbas
Faction*

Also known as the Palestine Liberation
 Front
 Also known as the PLF
 Also known as PLF-Abu Abbas

*Popular Front for the Liberation of
Palestine*

Also known as the PFLP
 Also known as the Red Eagles
 Also known as the Red Eagle Group
 Also known as the Red Eagle Gang
 Also known as the Halhul Gang
 Also known as the Halhul Squad
 Also known as Palestinian Popular
 Resistance Forces
 Also known as PPRF

*Popular Front for the Liberation of
Palestine-General Command*

Also known as PFLP-GC

al Qa'ida

Also known as al Qaeda
 Also known as "the Base"
 Also known as the Islamic Army
 Also known as the World Islamic Front
 for Jihad Against Jews and Crusaders
 Also known as the Islamic Army for the
 Liberation of the Holy Places
 Also known as the Usama Bin Laden
 Network
 Also known as the Usama Bin Laden
 Organization
 Also known as Islamic Salvation
 Foundation
 Also known as The Group for the
 Preservation of the Holy Sites

*Revolutionary Armed Forces of
Colombia*

Also known as FARC
 Also known as Fuerzas Armadas
 Revolucionarias de Colombia

Revolutionary Nuclei

Also known as the Revolutionary
 People's Struggle
 Also known as Epanastatikos Laikos
 Agonas
 Also known as ELA
 Also known as Revolutionary Popular
 Struggle
 Also known as Popular Revolutionary
 Struggle
 Also known as June 78
 Also known as Organization of
 Revolutionary Internationalist
 Solidarity
 Also known as Revolutionary Cells
 Also known as Liberation Struggle

**Revolutionary Organization 17
November**

Also known as 17 November
Also known as Epanastatiki Organosi 17
Noemvri

**Revolutionary People's Liberation Party/
Front**

Also known as Devrimci Halk Kurtulus
Partisi-Cephesi
Also known as the DHKP/C
Also known as Devrimci Sol
Also known as Revolutionary Left
Also known as Dev Sol
Also known as Dev Sol Silahli Devrimci
Birlikleri
Also known as Dev Sol SDB
Also known as Dev Sol Armed
Revolutionary Units

Shining Path

Also known in Spanish as Sendero
Luminoso
Also known as SL
Also known as Partido Comunista del
Peru en el Sendero Luminoso de Jose
Carlos Mariategui
Also known as Communist Party of Peru
on the Shining Path of Jose Carlos
Mariategui
Also known as Partido Comunista del
Peru
Also known as Communist Party of Peru
Also known as PCP
Also known as Socorro Popular del Peru
Also known as People's Aid of Peru
Also known as SPP
Also known as Ejercito Guerrillero
Popular
Also known as People's Guerrilla Army
Also known as EGP
Also known as Ejercito Popular de
Liberacion
Also known as People's Liberation
Army
Also known as the EPL.

Dated: September 28, 2001.

Francis X. Taylor,

*Coordinator for Counterterrorism,
Department of State.*

[FR Doc. 01-24911 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-10-P

TENNESSEE VALLEY AUTHORITY**Meeting of the Regional Resource
Stewardship Council**

AGENCY: Tennessee Valley Authority
(TVA).

ACTION: Notice of meeting.

SUMMARY: The Regional Resource
Stewardship Council (Regional Council)
will hold a meeting to consider various
matters. Notice of this meeting is given
under the Federal Advisory Committee
Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the
following briefings:

1. Feedback from TVA on the
Recommendations Submitted to the
TVA Board of Directors
2. Report from the Integrated River
Management Subcommittee on
Ocoee Water Releases
3. Recommendations/Report from the
Water Quality Subcommittee on 26a
and Aquatic Biodiversity
4. Public comments
5. Preliminary Results of the LOUD
Proposal
6. Federal Funding Potential
7. Reservoir Operations Study
8. Discussion of Recommendations
9. Planning for Future Meetings

It is the Regional Council's practice to
provide an opportunity for members of
the public to make oral public
comments at its meetings. Public
comment session is scheduled from 4-
5 p.m. Central time on Thursday,
October 25. Members of the public who
wish to make oral public comments may
do so during the Public comment
portion of the agenda. Up to one hour
will be allotted for the Public comments
with participation available on a first-
come, first-served basis. Speakers
addressing the Council are requested to
limit their remarks to no more than 5
minutes. Persons wishing to speak
register at the door and are then called
on by the Council Chair during the
public comment period. Handout
materials should be limited to one
printed page. Written comments are also
invited and may be mailed to the
Regional Resource Stewardship Council,
Tennessee Valley Authority, 400 West
Summit Hill Drive, WT 11A, Knoxville,
Tennessee 37902.

DATES: The meeting will begin on
Thursday, October 25, from 1 p.m. to 5
p.m. Central time. Public comments are
scheduled for October 25 beginning at 4
p.m. On Friday, October 26, the meeting
will resume at 8:00 a.m. Central time
and adjourn at 11:30 a.m.

ADDRESSES: The meeting will be held in
Lake Barkley State Resort Park, located
at 3500 State Park Road, Cadiz,
Kentucky 42211-0790, and will be open
to the public. Anyone needing special
access or accommodations should let
the contact below know at least a week
in advance.

FOR FURTHER INFORMATION CONTACT:
Sandra L. Hill, 400 West Summit Hill
Drive, WT 11A, Knoxville, Tennessee
37902, (865) 632-2333.

Dated: September 28, 2001.

Ronald J. Williams,

*Acting Executive Vice President, River System
Operations & Environment, Tennessee Valley
Authority.*

[FR Doc. 01-25179 Filed 10-4-01; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Proposed [Preliminary] Airworthiness
Criteria for Airworthiness Certification
of Transport Category Airships**

AGENCY: Federal Aviation
Administration, DOT.

ACTION: Notice of availability; request
for comments.

SUMMARY: This notice announces the
initiation of a Federal Aviation
Administration (FAA) proposed
airworthiness criteria for transport
category airships. This notice advises
the public, and especially
manufacturers and potential
manufacturers of transport category
airships, that the FAA intends to
develop an airworthiness criteria for
transport category airships. This notice
includes the Transport Airship
Requirement (TAR) as developed by the
Inspectie Verkeer en Waterstaat—
Divisie Luchtvaart (CAA-NL), the civil
aviation authority of the Netherlands,
and the Luftfahrt Bundesamt (LBA), the
civil aviation authority for Germany.
The TAR is based on 14 CFR part 25
transport airplane requirements and
FAA-P-8110-2 Airship Design Criteria.
It is intended that the TAR will form the
core of a United States airworthiness
criteria for transport category airships.
While considering the TAR as the core
criteria for the certification of transport
airships, the FAA may propose alternate
or additional requirements for some
portions of the TAR. This notice is
necessary to advise the public of the
development of this proposed
airworthiness criteria and give all
interested persons an opportunity to
present their views on it.

DATE: Send your comments by February
5, 2002.

Discussion: In September 2001, the
Small Airplane Directorate proposed
airworthiness criteria for transport
category airships. We are making the
proposed airworthiness criteria,
including "Transport Airship
Requirements" (TAR), dated March,
2000, available to the public and to all
manufacturers for their comments.

Airships are certified under the
provisions of 14 CFR 21.17(b), which

allows the Administrator to designate appropriate airworthiness criteria for special classes of aircraft, including airships. The designated criteria should provide a level of safety equivalent to the airworthiness regulations contained in 14 CFR parts 23, 25, 27, 29, 31, 33 and 35. The FAA has decided that airworthiness criteria will be the most efficient and flexible method of obtaining an acceptable level of safety for transport category airships. The FAA bases this decision on the formative state of this industry and the potential for airships to develop into a new, viable, and important part of the aerospace industry. The FAA may decide to codify airship airworthiness requirements at a later time if warranted.

The criteria will be acceptable airworthiness criteria, but not the only acceptable criteria, for certificating a transport category airship in the United States. It is intended to utilize the TAR as a basis for a harmonized airworthiness standard (criteria) that will allow bilateral certification and validation of airships between nations that have adopted the TAR as a basis for the certification of such airships. This notice is intended to be the first step in developing a transport airship airworthiness criteria, public comments and subsequent FAA determinations may lead to modifications or additions to the proposed criteria as the body of knowledge concerning large airship manufacture and operations expands. It is anticipated that there will be modification of the criteria from the current noticed version as experience and research warrant such changes.

The proposed airworthiness criteria will apply to rigid, non-rigid, and semi-rigid transport category airships that are capable of vertical ascent (near equilibrium) operations. The proposed airworthiness criteria (and the TAR) does not include provisions for hybrid aircraft/airships that require or operate with significant dynamic lift. The FAA expects modifications and additions to the proposed criteria will be necessary for specific airship projects, due to the unique nature of each large airship design.

What is a transport airship? A transport airship is proposed to be defined as an airship that has an envelope volume larger than currently certificated normal category airships (425,000 cubic feet) or that has a combined crew-passenger capacity of 12 or more persons.

When adopted, the FAA is proposing that the airworthiness criteria for transport airships may be used for a fixed time period. The public notice of

availability for the airworthiness criteria will specify the effective period of use to ensure periodic reviews of the criteria.

While considering the TAR as the core criteria for the certification of transport airships, the FAA has specific concerns and is interested in proposing alternate or additional requirements for some portions of the proposed criteria. The FAA especially desires to obtain public comment on the following:

Flight Tests. 14 CFR part 21, § 21.35, paragraphs (f)(1) and (f)(2), provides that a certain number of flight hours must be flown before type certification. In addition to the provisions of part 21, the FAA proposes that a transport category airship may be required to successfully accomplish a certain number of complete mooring, take off, and cargo exchange cycles prior to type certification. This may result in additional flight hours being required to accomplish this requirement, due to the longer mission times of airships.

Flight in Rough Air, Gust and Turbulence Loads. TAR paragraphs 261, 341 and other structural and handling requirements are based on knowledge of the turbulence and gust environments that the airship will encounter. The FAA is concerned that the determination of an appropriate gust model for analysis and the determination of the maximum gust and gust shape will be a limiting design parameter, especially for rigid and semi-rigid airships. Given the extremes of weather in the North American landmass (with respect to severity, magnitude and front speeds) and the historical experience concerning the loss of the Navy airships Shenandoah, Macon and Akron, the FAA desires to obtain additional specific comment on these requirements in the proposed criteria. The FAA anticipates that both structural and controllability issues will be relevant when considering gusts and turbulence and the typical operating environment of airships (less than 1500 feet AGL). There may well be a much greater reliance on operational limitations and interrelationship of operational and airworthiness requirements to obtain an acceptable level of safety with airship operations than has been the past practice with other aircraft.

Ditching and Emergency Evacuation. TAR paragraphs 801 and 803 address these concerns. However, additional specific analyses or tests will need to be proposed and performed to address these issues. Emergency evacuation or ditching of a large airship will entail problems that are not encountered with fixed wing aircraft. This could include

collapse of the airship envelope, lifting, rolling or moving of the airship during evacuation, and hazardous effects of leaking lifting gas. Additionally, the possibility of removing or adding personnel onto the ship for medical or maintenance reasons during operations may need to be considered.

Environmental Issues. The proposed airworthiness requirement does not include provisions that may be required due to environmental laws. Environmental issues will be evaluated according to applicable regulations when an airship is actually certificated in the transport category.

Minimum Flight Crew, Relief Crew and Cargo Handling Crew. Large airships have not been operated in the United States for decades, the determination of crew duties and complements has never been determined by a United States civilian airworthiness authority. The FAA proposes a human factors study to be performed to establish acceptable workload, tasks, flight crew composition and duty rotation. This study will also include ground crew, cargo handling crew and related operations. This determination will also affect the flight deck and berth design.

Electrostatic Charging and Shock Hazards. The FAA proposes that additional provisions, similar to those proposed in the Joint Airworthiness Authorities (JAA) draft Joint Aviation Requirement (JAR) 25X899: Electrical Bonding and Protection Against Lightning and Static Electricity, be included to address electrostatic charging, shock hazards to crew and passengers, and electrical fault returns. For large airships that may use a great deal of non-conducting materials there is more concern with electrostatic charging and shock hazards.

Operational Rules. Operational requirements have not yet been proposed for the operation of large airships, therefore, the proposed airworthiness criteria may not thoroughly address these potential operational requirements. When such operational requirements are established, there could be additional certification or equipment requirements mandated for large airships to allow operation in the national airspace.

Design Standards for Changed Product and Continued Production. Transport airships have limited service experience worldwide and are anticipated to have extremely long service lives. Because of these factors, the FAA foresees a need to review and update the criteria on a regular basis. The FAA proposes limiting the useful life of the airworthiness criteria in order

to ensure that this review cycle occurs. As a result, the FAA is proposing a different approach to the certification basis of transport airships and their modifications and would like comments on the following:

The FAA is proposing that a transport airship type design approval be of limited duration. At the end of this duration, aircraft in service could continue to be operated, but the airship could not be manufactured because the design approval would have lapsed. A new or revised type approval would be needed for a manufacturer to continue or resume production. The new or revised type approval would then be to the most current airworthiness criteria. This could mean that transport airships in continuing production may need to be updated to meet the most current (updated) airworthiness criteria. Using the most current airworthiness criteria would also apply to design approvals granted for the modification of transport airships.

When the criteria are updated, the revision effective date may need to define an effective date that includes a reasonable time for transport airship manufacturers and modifiers to comply with the updated criteria. Changes to the airworthiness criteria for transport airships would only be applied retroactively to previously manufactured airships if required by the changed criteria to address a safety of flight issue by issuance of an airworthiness directive.

ADDRESSES: Copies of the proposed airworthiness criteria for transport category airships may be requested from the following: Small Airplane Directorate, Standards Office (ACE-110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The proposed airworthiness criteria will be available on the Internet within the next two weeks at the following address: http://www.faa.gov/programs_rsvp2/smart/faq_home_page/certification/aircraft/small_airplane_directorate_news_proposed.html. Send all comments on the proposed airworthiness criteria for transport category airships to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mike Reyer or Karl Schletzbaum, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE-111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4131 (M. Reyer); or (816) 329-4146 (K. Schletzbaum); fax:

(816) 329-4090; e-mail: karl.schletzbaum@faa.gov or michael.reyer@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite your comments on the proposed airworthiness criteria for transport category airships. Send any data or views as you may desire. Identify the proposed transport category airship airworthiness criteria on your comments, and if you submit your comments in writing, send two copies of your comments to the above address. The Small Airplane Directorate will consider all communications received on or before the closing date for comments. We may change the proposal referred to in this notice because of the comments received.

You may also send comments to the following Internet address: 9-ACE-airships@faa.gov. Comments sent by fax or the Internet must contain "Comments to proposed transport category airship airworthiness criteria" in the subject line. You do not need to send two copies if you fax your comments or send them through the Internet. If you send comments over the Internet as an attached electronic file, format it in either Microsoft Word 97 for Windows or ASCII text. State what specific change you are seeking to the proposed airworthiness criteria and include justification (for example, reasons or data) for each request.

Issued in Kansas City, Missouri on September 28, 2001.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-25083 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)/Joint Planning Advisory Group (JPAG)

AGENCY: Maritime Administration, DOT.

ACTION: Synopsis of September 19, 2001 meeting with VISA participants.

On September 19, 2001, a Voluntary Intermodal Sealift Agreement (VISA) Joint Planning Advisory Group (JPAG) meeting was held via video telephonic conference (VTC). The sites connected by the VTC were the Military Sealift Command headquarters, Washington, DC, the Military Traffic Management Command, Alexandria, Virginia, and the

U.S. Transportation Command, Scott Air Force Base, Illinois.

Meeting attendance was by invitation only, due to the classified nature of the information discussed and the requirement for a government-issued security clearance. Of the 53 U.S.-flag carrier corporate participants enrolled in VISA at the time of the meeting, 17 cleared carrier representative companies participated in the JPAG VTC. In addition, JPAG attendance included representatives from the Department of Defense and the Maritime Administration (MARAD).

The purpose of the JPAG was to update VISA participants about sealift operations in response to the terrorist attacks of September 11, 2001. The meeting convened at 2:00 p.m. EDT and adjourned at 3:30 p.m.

The full text of the VISA program is published in 66 FR 10938-10947, dated February 20, 2001. One of the program requirements is that MARAD periodically publish a list of VISA participants in the **Federal Register**. As of September 19, 2001, the following commercial U.S.-flag vessel operators were enrolled in VISA with MARAD: Alaska Cargo Transport, Inc., American Automar, Inc., American President Lines, Ltd., American Roll-On Roll-Off Carrier, LLC, American Ship Management, L.L.C., Automar International Car Carrier, Inc., Beyel Brothers Inc., Caribe USA, Inc., Central Gulf Lines, Inc., Cook Inlet Marine, Crowley Liner Services, Inc., Crowley Marine Services, Inc., CSX Lines, LLC, E-Ships, Inc., Farrell Lines Incorporated, First American Bulk Carrier Corp., First Ocean Bulk Carrier-I, LLC, First Ocean Bulk Carrier-II, LLC, First Ocean Bulk Carrier-III, LLC, Foss Maritime Company, Gimrock Maritime, Inc., Liberty Shipping Group Limited Partnership, Lockwood Brothers, Inc., Lykes Lines Limited, LLC, Lynden Incorporated, Maersk Line, Limited, Matson Navigation Company, Inc., Maybank Navigation Company, LLC, McAllister Towing and Transportation Co., Inc., Moby Marine Corporation, NPR, Inc., Ocean Marine Shipping, Inc., Odyssey Shipping Line, LLC, OSG Carriers, Inc., Resolve Towing & Salvage, Inc., Samson Tug & Barge Company, Inc., Sea Star Line, LLC, Seacor Marine International Inc., Sealift Inc., Signet Maritime Corporation, Smith Maritime, STEA Corporation, Stevens Towing Co., Superior Marine Services, Inc., Totem Ocean Trailer Express, Inc., Trailer Bridge, Inc., TransAtlantic Lines LLC, Trico Marine Operators, Inc., Troika International, Ltd., U.S. Ship Management, Inc., Van Ommeren Shipping (USA) LLC,

Waterman Steamship Corporation, and Weeks Marine, Inc.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mr. William F. Trost, Acting Director, Office of Sealift Support, (202) 366-2323.

By order of the Maritime Administrator.
Dated: October 1, 2001.

Joel C. Richard,

Secretary.

[FR Doc. 01-24973 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA-2001-10735]

Reports, Forms, and Record keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 4, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Gregory Rymarz, NHTSA 400 Seventh Street, SW., Room 5208, NPP-22, Washington, DC 20590. Mr. Gregory Rymarz's telephone number is (202) 366-2570.

Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Highway Crash Data Collection for the Evaluation of Antilock Brake Systems (ABS) and Rear Impact Guards on Heavy Vehicles.

OMB Control Number: New.

Affected Public: State and Local Governments.

Form Number: N/A.

Abstract: As required by the Government Performance and Results Act of 1993 and Executive Order 12866 (58 FR 51735), NHTSA reviews existing regulations to determine if they are achieving policy goals. Safety Standard 121 (49 CFR 571.121) requires Antilock Brake Systems (ABS) on air-brake equipped truck-tractors manufactured on or after March 1, 1997 and on semi-trailers and single-unit trucks equipped with air brakes and manufactured on or after March 1, 1998. Safety Standards 223 (49 CFR 571.223) and 224 (49 CFR 571.224) set minimum requirements for the geometry, configuration, strength

and energy absorption capability of rear impact guards on full trailers and semi-trailers over 10,000 pounds Gross Vehicle Weight Rating manufactured on, or after, January 26, 1998. NHTSA's Office of Plans and Policy is planning a highway crash data collection effort that will provide adequate information to perform an evaluation of the effectiveness of ABS and rear impact guards for heavy trucks. This study will estimate the actual safety benefits (crashes, injuries, and fatalities avoided) achieved by the standards and provide a basis for assessing whether the standards are functioning as intended. Highway crash data will be analyzed to the extent that the experiences of heavy trucks equipped with ABS and rear impact guards can be compared with the experiences of heavy trucks not so equipped.

Estimated Annual Burden: The annual burden is estimated to be 4,373 hours.

Number of Respondents: The state police in two states will report information on a total of 15,000 crashes.

Issued on: October 1, 2001.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 01-24981 Filed 10-4-01; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34093]

Canadian Pacific Railway Company and Soo Line Corporation—Corporate Family Transaction Exemption—Delaware and Hudson Railway Company, Inc.

Canadian Pacific Railway Company (CPR), Soo Line Corporation (SLC) and Delaware and Hudson Railway Company, Inc. (DHRC) (collectively CP Parties) have filed a verified notice of exemption under 49 CFR 1180.2(d)(3) to undertake a corporate family transaction, which involves SLC's the acquisition of direct control of DHRC and its indirect control of nonoperating carriers controlled by DHRC.

CPR currently controls Soo Line Railroad Company (Soo) and DHRC. Soo is a direct subsidiary of SLC, which is an indirect subsidiary of CPR. DHRC is controlled directly by D&H Investments, Inc. (DHI), which is also an indirect subsidiary of CPR. Following the proposed corporate reorganization, DHI will no longer exist and DHRC will become a direct corporate subsidiary of SLC. SLC will hold 100 percent of the

outstanding shares of DHRC and will therefore control DHRC.¹

The proposed transaction was to have been consummated on or after September 26, 2001.

The purpose of the proposed transaction is to eliminate DHL and transfer the shares of DHRC to SLC to simplify the resulting corporate structure of the CPR corporate family. The proposed transaction is part of a corporate reorganization of the transportation and non-transportation businesses of CPR's parent, Canadian Pacific Limited. A new noncarrier holding company parent of CPR, Canadian Pacific Railway Limited, will be created and will become a publicly traded company.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). As described, the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the applicants' corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. As a condition to this exemption, any United States railroad employee affected by the transaction will be protected by the conditions imposed in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

¹ CP Parties state that the day-to-day operations of DHRC will continue to be managed by CPR.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34093, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Terence M. Hynes, Sidley Austin Brown & Wood, 1501 K Street, N.W., Washington, DC 20005.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: September 27, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 01-24927 Filed 10-4-01; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A meeting of the Midwest Citizen Advocacy Panel will be held in Omaha, Nebraska.

DATES: The meeting will be held Thursday, October 25, 2001, and Friday, October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1-888-912-1227, or 414-297-1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, October 25, 2001, from 9 a.m. to 4 p.m. and Friday, October 26, 2001, from 8:00 a.m. to Noon at the Doubletree Hotel, 1616 Dodge Street, Omaha, Nebraska. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. Public comments will be welcome during the meeting, or you can submit written comments to the panel by faxing to (414) 297-1623, or by mail to Citizen Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203-2221.

The Agenda will include the following: Reports by the CAP sub-groups, presentation of taxpayer issues by individual members, and discussion of issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: September 24, 2001.

Cindy Vanderpool,

Detailed Director, CAP Communication and Liaison.

[FR Doc. 01-25052 Filed 10-4-01; 8:45 am]

BILLING CODE 4830-01-P

Corrections

Federal Register

Vol. 66, No. 194

Friday, October 5, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-46 and 102-39

[FPMR Amendment H-208]

RIN 3090-AH23

Replacement of Personal Property Pursuant to the Exchange/Sale Authority

Correction

In final rule document 01-23553 beginning on page 48614 in the issue of Friday, September 21, 2001, make the following correction:

On page 48616, in the first column, in the last line, "(1) Vessels" should read, "(I) Vessels".

[FR Doc. C1-23553 Filed 10-4-01; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1175-N]

RIN 0938-ZA08

Medicare Program; Hospice Wage Index Fiscal Year 2002

Correction

In notice document 01-23820 beginning on page 49454 in the issue of Thursday, September 27, 2001, make the following correction:

On page 49463, in the Wage Index column, the fifth entry, "1.05423" should read, "1.0543".

[FR Doc. C1-23820 Filed 10-4-01; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AB30

Labor Certifications and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Delegation of Authority To Adjudicate Petitions; Deferral of Effective Date

Correction

In interim final rule document 01-24208 beginning on page 49275 in the issue of Thursday, September 27, 2001, make the following correction:

On page 49276, in the second column, in the 16th line, "October 27, 2002." should read, "September 27, 2002."

[FR Doc. C1-24208 Filed 10-4-01; 8:45 am]

BILLING CODE 1505-01-D

OFFICE OF SPECIAL COUNSEL

Privacy Act of 1974, System of Records

Correction

In notice document 01-17418 beginning on page 36611 in the issue of Thursday, July 12, 2001, make the following corrections:

1. On page 36612, in the second column, in the DATES section, beginning in the fifth line, "[30 days after publication of this notice]" should read, "August 13, 2001".

2. On page 36613, beginning in the second column, the last paragraph, paragraph r should read:
"r. To disclose information to the U.S. Department of Labor (DOL) about OSC's referral of a complaint alleging a violation of veterans preference requirements to DOL for further action under the Veterans' Employment Opportunities Act of 1998; to disclose information to DOL or any agency or person as needed to develop relevant information about matters referred by DOL to OSC under 38 U.S.C. 4324 (the Uniformed Services Employment and Reemployment Rights Act of 1994); to disclose information to DOL or any

agency or person as needed to advise on the status or disposition of matters referred by DOL to OSC for disciplinary action under 5 U.S.C. 1215, or litigation under 38 U.S.C. 4324."

[FR Doc. C1-17418 Filed 10-4-01; 8:45 am]

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 44791]

Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments

September 14, 2001.

Correction

In notice document 01-23463 beginning on page 48494 in the issue of Thursday, September 20, 2001, make the following correction:

On page 48494, in the second column, the Release No. should read as set forth above.

[FR Doc. C1-23463 Filed 10-4-01; 8:45 am]

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 44828/September 21, 2001]

Order Extending Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments Concerning the American Stock Exchange LLC

Correction

In notice document 01-24186 appearing on page 49438 in the issue of Thursday, September 27, 2001 make the following correction:

On page 49438, in the second column, the Release No. and subject title should read as set forth above.

[FR Doc. C1-24186 Filed 10-4-01; 8:45 am]

BILLING CODE 1505-01-D

**SECURITIES AND EXCHANGE
COMMISSION**

[Investment Company Act of 1940 Release
No. 25165/September 21, 2001]

**Order Extending Prior Order Under
Sections 6(c), 17(b) and 38(a) of the
Investment Company Act of 1940
Granting Exemptions From Certain
Provisions of the Act and Certain
Rules Thereunder***Correction*

In notice document 01-24189
beginning on page 49437 in the issue of
Thursday, September 27, 2001, make
the following correction:

On page 49437, in the third column,
the Release No. and subject title should
read as set forth above.

[FR Doc. C1-24189 Filed 10-4-01; 8:45 am]
BILLING CODE 1505-01-D

**SECURITIES AND EXCHANGE
COMMISSION**

[Securities Exchange Act of 1934 Release
No. 44827/September 21, 2001]

**Order Extending Emergency Order
Pursuant to Section 12(k)(2) of the
Securities Exchange Act of 1934
Taking Temporary Action to Respond
to Market Developments***Correction*

In notice document 01-24188
beginning on page 49438 in the issue of

Thursday, September 27, 2001, make
the following correction:

On page 49438, in the third column,
the Release No. and subject title should
read as set forth above.

[FR Doc. C1-24188 Filed 10-4-01; 8:45 am]
BILLING CODE 1505-01-D



Federal Register

Friday,
October 5, 2001

Part II

Environmental Protection Agency

40 CFR Part 89, 90, 91, etc.

Control of Emissions From Nonroad
Large Spark Ignition Engines and
Recreational Engines (Marine and Land-
Based); Proposed Rule

**ENVIRONMENTAL PROTECTION
AGENCY**
**40 CFR Parts 89, 90, 91, 94, 1048, 1051,
1065, and 1068**
[AMS-FRL-7058-8]
RIN 2060-A111
**Control of Emissions From Nonroad
Large Spark Ignition Engines and
Recreational Engines (Marine and
Land-Based)**
AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, we are proposing emission standards for several groups of nonroad engines that cause or contribute to air pollution but that have yet to be regulated by EPA. These engines include large spark-ignition engines such as those used in forklifts and airport tugs; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. Nationwide, engines and vehicles in these various categories contribute to ozone, CO, and PM nonattainment. These pollutants cause a range of adverse health effects, especially in terms of respiratory impairment and related illnesses. The proposed standards will help states achieve air quality standards. In addition, the proposed standards will help reduce acute exposure to CO, air toxics, and PM for operators and other people close to the emission source. They will also help address other environmental problems, such as visibility impairment in our national parks.

We expect that manufacturers will be able to maintain or even improve the performance of their products when

producing engines and equipment meeting the proposed standards. In fact, many engines will substantially reduce their fuel consumption, partially or completely offsetting any costs associated with the emission standards. Overall, we estimate the gasoline-equivalent fuel savings associated with the anticipated changes in technology resulting from this rule would be about 730 million gallons per year once the program is fully phased in. The proposal also has several provisions to address the unique limitations of small-volume manufacturers.

DATES: *Comments:* Send written comments on this proposed rule by December 19, 2001. See Section X.B for more information about written comments.

Hearings: We will hold a public hearing in the Washington, DC area on October 24. We will hold a second public hearing on October 30 in Denver, CO. See Section X.B for more information about public hearings.

ADDRESSES: *Comments:* You may send written comments in paper form or by e-mail. We must receive them by the date indicated under **DATES** above. Send paper copies of written comments (in duplicate if possible) to the contact person listed below. You may also submit comments via e-mail to "NRANPRM@epa.gov." In your correspondence, refer to Docket A-2000-01. See Section X.B for more information on comment procedures.

Docket: EPA's Air Docket makes materials related to this rulemaking available for review in Public Docket No. A-2000-01 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M-1500 (on the ground floor in Waterside Mall), 401 M Street, SW., Washington, DC 20460 between 8 a.m. to 5:30 p.m., Monday through Friday, except on

government holidays. You can reach the Air Docket by telephone at (202) 260-7548, and by facsimile (202) 260-4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Hearings: We will hold a public hearing on October 24, 2001 at Washington Dulles Airport Marriott, Dulles, VA 20166 (703-471-9500). We will hold a second public hearing October 30, 2001 at Doubletree Hotel, 3203 Quebec Street, Denver, CO 80207 (303-321-3333). If you want to testify at a hearing, notify the contact person listed below at least ten days before the date of the hearing. See Section X.B for more information on the public-hearing procedures.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214-4334; Fax: (734) 214-4816; E-mail: borushko.margaret@epa.gov.

SUPPLEMENTARY INFORMATION:
Regulated Entities

This proposed action would affect companies that manufacture or introduce into commerce any of the engines or vehicles that would be subject to the proposed standards. These include: spark-ignition industrial engines such as those used in forklifts and airport tugs; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. This proposed action would also affect companies buying engines for installation in nonroad equipment. There are also proposed requirements that apply to those who rebuild any of the affected nonroad engines. Regulated categories and entities include:

Category	NAICS codes ^a	SIC codes ^b	Examples of potentially regulated entities
Industry	333618	3519	Manufacturers of new nonroad SI engines, new marine engines.
Do	333111	3523	Manufacturers of farm equipment.
Do	333112	3531	Manufacturers of construction equipment, recreational marine vessels.
Do	333924	3537	Manufacturers of industrial trucks.
Do	811310	7699	Engine repair and maintenance.
Do	336991	.....	Motorcycles and motorcycle parts manufacturers.
Do	336999	.....	Snowmobiles and all-terrain vehicle manufacturers.
Do	421110	.....	Independent Commercial Importers of Vehicles and Parts.

^a North American Industry Classification System (NAICS).

^b Standard Industrial Classification (SIC) system code.

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by

this action, you should carefully examine the proposed regulations. You may direct questions regarding the applicability of this action to the person

listed in **FOR FURTHER INFORMATION CONTACT**.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language, Draft Regulatory Support Document, and other rule documents are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost incurred for internet connectivity. The electronic version of this proposed rule is made available on the day of publication on the primary web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary web site listed below.

1. <http://www.epa.gov/docs/fedrgstr/EPA-AIR/> (either select desired date or use Search feature)
2. <http://www.epa.gov/otaq/> (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

Table of Contents

- I. Introduction
 - A. Overview
 - B. How Is This Document Organized?
 - C. What Categories of Vehicles and Engines Are Covered in This Proposal?
 - D. What Requirements Are We Proposing?
 - E. Why Is EPA Taking This Action?
 - F. Putting This Proposal Into Perspective
- II. Public Health and Welfare Effects of Emissions From Covered Engines
 - A. Background
 - B. What Are the Public Health and Welfare Effects Associated With Emissions From Nonroad Engines Subject to the Proposed Standards?
 - C. What Is the Inventory Contribution From the Nonroad Engines and Vehicles That Would Be Subject to This Proposal?
 - D. Regional and Local-Scale Public Health and Welfare Effects
- III. Nonroad: General Concepts
 - A. Scope of Application
 - B. Emission Standards and Testing
 - C. Demonstrating Compliance
 - D. Other Concepts
- IV. Large SI Engines
 - A. Overview
 - B. Large SI Engines Covered by This Proposal
 - C. Proposed Standards
 - D. Proposed Testing Requirements and Supplemental Emission Standards
 - E. Special Compliance Provisions
 - F. Technological Feasibility of the Standards
- V. Recreational Marine Diesel Engines
 - A. Overview
 - B. Engines Covered by This Proposal
 - C. Proposed Standards for Marine Diesel Engines
 - D. Proposed Testing Requirements
 - E. Special Compliance Provisions
 - F. Technical Amendments

- G. Technological Feasibility
- VI. Recreational Vehicles and Engines
 - A. Overview
 - B. Engines Covered by this Proposal
 - C. Proposed Standards
 - D. Proposed Testing Requirements
 - E. Special Compliance Provisions
 - F. Technological Feasibility of the Standards
- VII. General Nonroad Compliance Provisions
 - A. Miscellaneous Provisions (Part 1068, Subpart A)
 - B. Prohibited Acts and Related Requirements (Part 1068, Subpart B)
 - C. Exemptions (Part 1068, Subpart C)
 - D. Imports (Part 1068, Subpart D)
 - E. Selective Enforcement Audit (Part 1068, Subpart E)
 - F. Defect Reporting and Recall (Part 1068, Subpart F)
 - G. Public Hearings (Part 1068, Subpart G)
- VIII. General Test Procedures
 - A. General Provisions
 - B. Laboratory Testing Equipment
 - C. Laboratory Testing Procedures
- IX. Projected Impacts
 - A. Environmental Impact
 - B. Economic Impact
 - C. Cost per Ton of Emissions Reduced
 - D. Additional Benefits
- X. Public Participation
 - A. How Do I Submit Comments?
 - B. Will There Be a Public Hearing?
- XI. Administrative Requirements
 - A. Administrative Designation and Regulatory Analysis (Executive Order 12866)
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
 - D. Intergovernmental Relations
 - E. National Technology Transfer and Advancement Act
 - F. Protection of Children (Executive Order 13045)
 - G. Federalism (Executive Order 13132)
 - H. Energy Effects (Executive Order 13211)
 - I. Plain Language

I. Introduction

A. Overview

Air pollution is a serious threat to the health and well-being of millions of Americans and imposes a large burden on the U.S. economy. Ground-level ozone, carbon monoxide, and particulate matter are linked to potentially serious respiratory health problems, especially respiratory effects and environmental degradation, including visibility impairment in our precious national parks. Over the past quarter century, state and federal representatives have established emission-control programs that significantly reduce emissions from individual sources. Many of these sources now pollute at only a small fraction of their precontrol rates. This proposal further addresses these air-pollution concerns by proposing national emission standards for several types of nonroad engines and vehicles that are currently unregulated. These

include industrial spark-ignition engines such as those used in forklifts and airport tugs; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines.¹ The proposed standards are a continuation of the process of establishing standards for nonroad engines and vehicles, as required by Clean Air Act section 213(a)(3). All the nonroad engines subject to this proposal are still unregulated emission sources.

Nationwide, these engines are a significant source of mobile-source air pollution. They currently account for about 13 percent of mobile-source hydrocarbon (HC) emissions, 6 percent of mobile-source carbon monoxide (CO) emissions, 3 percent of mobile-source oxides of nitrogen (NO_x) emissions, and 1 percent of mobile-source particulate matter (PM) emissions.² The proposed standards will reduce exposure to these emissions and help avoid a range of adverse health effects associated with ambient ozone, CO, and PM levels, especially in terms of respiratory impairment and related illnesses. In addition, the proposed standards will help reduce acute exposure to CO, air toxics, and PM for persons who operate or who work with or are otherwise active in close proximity to these engines. They will also help address other environmental problems associated with these engines, such as visibility impairment in our national parks and other wilderness areas where recreational vehicles and marine engines are often used.

This proposal follows a final finding published on December 7, 2000 (65 FR 76790). Under this finding, EPA found that industrial spark-ignition (SI) engines rated above 19 kilowatts (kW), as well as all land-based recreational nonroad spark-ignition engines, cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide (CO) nonattainment area. We also found that particulate matter (PM) emissions from these engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

This proposal also follows EPA's Advance Notice of Proposed

¹ Diesel-cycle engines, referred to simply as "diesel engines" in this document, may also be referred to as compression-ignition (or CI) engines. These engines typically operate on diesel fuel, but other fuels may also be used. Otto-cycle engines (referred to here as spark-ignition or SI engines) typically operate on gasoline, liquefied petroleum gas, or natural gas.

² While we characterize emissions of hydrocarbons, this can be used as a surrogate for volatile organic compounds (VOC), which is a broader group of compounds.

Rulemaking (ANRPM) published on December 7, 2000 (65 FR 76797). In that Advance Notice, we provided an initial overview of possible regulatory strategies for the nonroad vehicles and engines and invited early input to the process of developing standards. We received comments on the Advance Notice from a wide variety of stakeholders, including the engine industry, the equipment industry, various governmental bodies, environmental groups, and the general public. The Advance Notice, the related comments, and other new information provide the framework for this proposal.

B. How Is This Document Organized?

This proposal covers engines and vehicles that vary in design and use, and many readers may be interested in only one or two of the applications. For the purpose of this proposal, we have chosen to group engines by common application (e.g., recreational land-based engines, marine engines, large spark-ignition engines used in commercial applications). We have attempted to organize the document in a way that allows each reader to focus on the applications of particular interest. The Air Quality discussion in Section II is general in nature, however, and applies to all the categories covered by this proposal.

The next four sections contain our proposal for the nonroad engines that are the subject of this action. Sections III contains some general concepts that are relevant to all of the nonroad engines covered by this proposal. Section IV through VI present information specific to each of the nonroad applications covered by the proposal, including standards, effective dates, testing information, and other specific requirements.

Sections VII and VIII describe a wide range of compliance and testing provisions that apply generally to engines and vehicles from all the nonroad engine and vehicle categories included in this proposal. Several of these provisions apply not only to manufacturers, but also to equipment manufacturers installing certified engines, remanufacturing facilities, operators, and others. Therefore, all affected parties should read the information contained in this section.

Section IX summarizes the projected impacts and a discussion of the benefits of this proposal. Finally, Sections X and XI contain information about public participation, how we satisfied our administrative requirements, and the statutory provisions and legal authority for this proposal.

The remainder of this Section I summarizes important background information about this proposal, including the engines covered, the proposed standards, and why we are proposing them.

C. What Categories of Vehicles and Engines Are Covered in This Proposal?

This proposal presents regulatory strategies for new nonroad vehicles and engines that have yet to be regulated under EPA's nonroad engine programs. This proposal covers the following engines:

- Land-based spark-ignition recreational engines, including those used in snowmobiles, off-highway motorcycles, and all-terrain vehicles. For the purpose of this proposal, we are calling this group of engines "recreational vehicles," even though all-terrain vehicles can be used for commercial purposes.
- Land-based spark-ignition engines rated over 19 kW, including engines used in forklifts, generators, airport tugs, and various farm, construction, and industrial equipment. This category also includes auxiliary marine engines, but does not include engines used in recreational vehicles. For the purpose of this proposal, we are calling this group of engines "Large SI engines."
- Recreational marine diesel engines.

This proposal covers new engines that are used in the United States, whether they are made domestically or imported.³ A more detailed discussion of the meaning of the terms "new," "imported," as well as other terms that help define the scope of application of this proposal, is contained in Section III of this preamble.

We intended to include in this proposal emission standards for two additional vehicle categories: new exhaust emission standards for highway motorcycles and new evaporative emission standards for marine vessels powered by spark-ignition engines. Proposals for these two categories are not included in the September 14 deadline mandated by the courts, as is the case for the remaining contents that appear in today's proposed rule. We are committed to issue proposals regarding these categories within the next two to three months. Interested parties will have an opportunity to comment on issues associated with the proposed standards for these two categories during the public review period that

³ For this proposal, we consider the United States to include the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

will begin after a subsequent proposal or proposals are issued.

D. What Requirements Are We Proposing?

The fundamental requirement for engines under Clean Air Act section 213 is to meet EPA's emission standards. The Act requires that standards achieve the greatest degree of emission reduction achievable through the application of technology that will be available, giving appropriate consideration to cost, noise, energy, and safety factors. Other requirements such as applying for certification, labeling engines, and meeting warranty requirements define a process for implementing the proposed program in an effective way.

With regard to Large SI engines, we are proposing a two-phase program. The first phase of the standards, to go into effect in 2004, are the same as those recently adopted by the California Air Resources Board. These standards will reduce combined HC and NO_x emissions by nearly 75 percent, based on a steady-state test. In 2007, we propose to supplement these standards by setting limits that would require optimizing the same technologies but would be based on a transient test cycle. New requirements for evaporative emissions and engine diagnostics would also start in 2007.

For recreational vehicles, we are proposing emission standards for snowmobiles separately from off-highway motorcycles and all-terrain vehicles. For snowmobiles, we are proposing a first phase of standards for HC and CO emissions based on the use of clean carburetion or 2-stroke electronic fuel injection (EFI) technology, and a second phase of emission standards for snowmobiles that would involve significant use of direct fuel injection 2-stroke technology, as well as possible limited conversion to 4-stroke engines. For off highway motorcycles and all-terrain vehicles, we are proposing standards that would result in a 50-percent reduction and is based mainly on moving these engines from 2-stroke to 4-stroke technology. In addition, we are proposing a second phase of standards for all-terrain vehicles that would require some catalyst use.

We are also proposing voluntary Blue Sky Series emission standards for recreational marine diesel engines and industrial spark-ignition engines. Blue Sky Series emission standards are intended to encourage the introduction and more widespread use of low-emission technologies. Manufacturers could be motivated to exceed emission

requirements either to gain early experience with certain technologies or as a response to market demand or local government programs. For recreational vehicles, we are proposing separate voluntary standards based more on providing consumers with an option of buying low-emission models.

E. Why Is EPA Taking This Action?

There are important public health and welfare reasons supporting the standards proposed in this document. As described in Section II.B, these engines contribute to air pollution which causes public health and welfare problems. Emissions from these engines contribute to ground level ozone and ambient CO and PM levels. Exposure to ground level ozone, CO, and PM can cause serious respiratory problems. These emissions also contribute to other serious environmental problems, including visibility impairment.

We believe existing technology that can be applied to these engines would reduce emissions of these harmful pollutants. Manufacturers can reduce 2-stroke engine emissions by improving fuel management and calibration. In addition, many of the existing 2-stroke engines in these categories can be converted to 4-stroke technology. Finally, there are modifications that can be made to 4-stroke engines, often short

of requiring catalysts, that can reduce emissions even further.

F. Putting This Proposal Into Perspective

This proposal should be considered in the broader context of EPA's nonroad emission-control programs; state-level programs, particularly in California; and international efforts. Each of these are described in more detail below.

1. EPA's Nonroad Emission-Control Programs

a. EPA's nonroad process. Clean Air Act section 213(a)(1) directs us to study emissions from nonroad engines and vehicles to determine, among other things, whether these emissions "cause, or significantly contribute to, air pollution that may reasonably be anticipated to endanger public health or welfare." Section 213(a)(2) further required us to determine whether emissions of CO, VOC, and NO_x from all nonroad engines significantly contribute to ozone or CO emissions in more than one nonattainment area. If we determine that emissions from all nonroad engines were significant contributors, section 213(a)(3) then requires us to establish emission standards for classes or categories of new nonroad engines and vehicles that in our judgment cause or contribute to such pollution. We may also set

emission standards under section 213(a)(4) regulating any other emissions from nonroad engines that we find contribute significantly to air pollution.

We completed the Nonroad Engine and Vehicle Emission Study, required by Clean Air Act section 213(a)(1), in November 1991.⁴ On June 17, 1994, we made an affirmative determination under section 213(a)(2) that nonroad emissions are significant contributors to ozone or CO in more than one nonattainment area. We also determined that these engines make a significant contribution to PM and smoke emissions that may reasonably be anticipated to endanger public health or welfare. In the same document, we set a first phase of emission standards (now referred to as Tier 1 standards) for land-based nonroad diesel engines rated at or above 37 kW. We recently added a more stringent set of Tier 2 and Tier 3 emission levels for new land-based nonroad diesel engines at or above 37 kW and adopted Tier 1 standards for land-based nonroad diesel engines less than 37 kW. Our other emission-control programs for nonroad engines are listed in Table I.F-1. This proposal takes another step toward the comprehensive nonroad engine emission-control strategy envisioned in the Act by proposing an emission-control program for the remaining unregulated nonroad engines.

TABLE I.F-1.—EPA'S NONROAD EMISSION-CONTROL PROGRAMS

Engine category	Final rulemaking	Date
Land-based diesel engines ≥ 37 kW—Tier 1	56 FR 31306	June 17, 1994.
Spark-ignition engines ≤ 19 kW—Phase 1	60 FR 34581	July 3, 1995.
Spark-ignition marine	61 FR 52088	October 4, 1996.
Locomotives	63 FR 18978	April 16, 1998.
Land-based diesel engines—Tier 1 and Tier 2 for engines < 37 kW	63 FR 56968	October 23, 1998.
—Tier 2 and Tier 3 for engines ≥ 37 kW		
Commercial marine diesel	64 FR 73300	December 29, 1999.
Spark-ignition engines ≤ 19 kW (Non-handheld)—Phase 2	64 FR 15208	March 30, 1999.
Spark-ignition engines ≤ 19 kW (Handheld)—Phase 2	65 FR 24268	April 25, 2000.

b. National standards for marine engines. In the October 1996 final rule for spark-ignition marine engines, we set standards only for outboard and personal watercraft engines. We decided not to finalize emission standards for sterndrive or inboard marine engines at that time. Uncontrolled emission levels from sterndrive and inboard marine engines were already significantly lower than the outboard and personal watercraft engines. We did, however, leave open the possibility of revisiting the need for emission standards for

sterndrive and inboard engines in the future.

In December 1999, we published emission standards for commercial marine diesel engines. To allow more time to evaluate the potential impact of the proposed emission limits on the recreational vessel industry, we did not include recreational propulsion marine diesel engines in that rulemaking.

c. National standards for land-based spark-ignition engines. The standards we have set to date for land-based, spark-ignition nonroad engines apply to engines typically used in lawn and

garden applications. In adopting these emission standards, we decided not to include engines rated over 19 kW or any engines used in recreational vehicles. The proposed emission-control program in this document addresses these remaining unregulated engines.

2. State Initiatives

Under Clean Air Act section 209, California has the authority to regulate emissions from new motor vehicles and new motor vehicle engines. California may also regulate emissions from nonroad engines, with the exception of

⁴ This study is available in docket A-92-28.

new engines used in locomotives and new engines used in farm and construction equipment rated under 130 kW.⁵ So far, the California Air Resources Board (California ARB) has adopted requirements for four groups of nonroad engines: (1) Diesel- and Otto-cycle small off-road engines rated under 19 kW; (2) new land-based nonroad diesel engines rated over 130 kW; (3) land-based nonroad recreational engines, including all-terrain vehicles, snowmobiles, off-highway motorcycles, go-carts, and other similar vehicles; and (4) new nonroad SI engines rated over 19 kW. They have approved a voluntary registration and control program for existing portable equipment.

Other states may adopt emission standards set by California ARB, but are otherwise preempted from setting emission standards for new engines or vehicles. In contrast, there is generally no federal preemption of state initiatives related to the way individuals use individual engines or vehicles.

a. Industrial SI engines. California ARB in 1998 adopted requirements that apply to new nonroad engines rated over 25 hp produced for California starting in 2001. These standards phase in over three years, during which manufacturers show only that engines meet the standards before they start in service. Beginning in 2004, the standards apply to 100 percent of engines sold in California, including a requirement to show that an engine meets emission standards throughout its useful life. As described above, these standards do not apply to engines under 130 kW used in farm or construction equipment. Texas has adopted the California ARB emission standards statewide starting in 2004.

b. Off-highway motorcycles and all-terrain vehicles. California established standards for off-highway motorcycles and all-terrain vehicles which took effect in January 1997 (1999 for vehicles with engines of 90 cc or less). The standards are 1.2 g/km HC and 15.0 g/km CO and are based on the highway motorcycle chassis test procedures. Manufacturers may certify all-terrain vehicles to optional standards, which are based on the utility engine test procedure.⁶ These standards are 12 g/

hp-hr HC+NO_x and 300 g/hp-hr CO, for all-terrain vehicles with engine displacements less than 225 cubic centimeters (cc) and 10 g/hp-hr NC+NO_x and 300 g/hp-hr CO, for all-terrain vehicles with engine displacement greater than 225 cc. The utility engine test procedure is the procedure over which Small SI engines are tested. The stringency level of the standards was based on the emissions performance of 4-stroke engines and advanced 2-stroke engines equipped with a catalytic converter. California anticipated that the standards would be met initially through the use of high performance 4-stroke engines.

California revisited the program in the 1997 time frame because a lack of certified product from manufacturers was reportedly creating economic hardship for dealerships. The number of certified off-highway motorcycle models was particularly inadequate.⁷ In 1998, California revised the program, allowing the use of uncertified products in off-highway vehicle recreation areas with regional/seasonal use restrictions. Currently, noncomplying vehicles can be legally sold in California and used in attainment areas year-round and in nonattainment areas during months when exceedances of the state ozone standard are not expected. For enforcement purposes, certified and uncertified products are identified respectively with green and red stickers. Only about one-third of off-highway motorcycles sold in California are certified.

3. Actions in Other Countries

a. European action—Recreational Marine Engines. The European Commission has proposed emission standards for recreational marine engines, including both diesel and gasoline engines. These requirements would apply to all new engines sold in member countries. The numerical emission standards for recreational diesel marine engines, shown in Table I.F-2, consist of the Annex VI NO_x standard for small marine diesel engines, the rough equivalent of Nonroad Diesel Tier 1 emission standards for HC and CO. Emission testing is to be conducted using the ISO D2 duty cycle for constant-speed engines and the ISO E5 duty cycle for all other engines. Table I.F-2 also presents average baseline emissions

based on data that we have collected. These data are presented in Chapter 4 of the Draft Regulatory Support Document. We have received comment that we should apply these standards in the U.S., but the proposed European emission standards for recreational marine diesel engines may not result in a decrease in emissions, and may even allow an increase in emissions from engines operated in the U.S.

TABLE I.F-2.—PROPOSED EUROPEAN EMISSION STANDARDS FOR RECREATIONAL MARINE DIESEL ENGINES

Pollutant	Emission standard (g/k W-hr)	Baseline emissions (g/k W-hr)
NO _x	9.8	8.9
PM	1.4	0.2
HC	^a 1.5	0.3
CO	5.0	1.3

^a Increases slightly with increasing engine power rating.

b. International Maritime Organization—CI Marine Engines. In response to growing international concern about air pollution and in recognition of the highly international nature of maritime transportation, the International Maritime Organization developed a program to reduce NO_x and SO_x emissions from marine vessels. No restrictions on PM, HC, or CO emissions were considered. The NO_x provisions, contained in Regulation 13 of Annex VI to the International Convention on the Prevention of Pollution from Ships (MARPOL 73/78), specify that each diesel engine with a power output of more than 130 kW installed on a ship constructed on or after January 1, 2000, or that undergoes a major conversion on or after January 1, 2000, must meet the NO_x emission standards in Table I.F-3.⁸ The Annex does not distinguish between marine diesel engines installed on recreational or commercial vessels; all marine diesel engines above 130 kW would be subject to the standards' regardless of their use.

TABLE I.F-3.—MARPOL ANNEX VI NO_x STANDARDS

Engine speed (n = engine speed, rpm)	NO _x (g/kW-hr)
n < 130 rpm	17.0
130 rpm ≤ n < 2000 rpm	45*n ^(-0.2)

⁸ Additional information about the MARPOL Annex VI NO_x standards can be found in the documents for our commercial marine diesel standards, which can be found on our website (<http://www.epa.gov/otaq/marine.htm>). That website also contains facts sheets and other information about the Annex.

⁵ The Clean Air Act limits the role states may play in regulating emissions from new motor vehicles and nonroad engines. California is permitted to establish emission standards for new motor vehicles and most nonroad engines; other states may adopt California's programs (sections 209 and 177 of the Act).

⁶ Notice to Off-Highway Recreational Vehicle Manufacturers and All Other Interested Parties Regarding Alternate Emission Standards for All-Terrain Vehicles, Mail Out #95-16, April 28, 1995.

California ARB (Docket A-2000-01, document II-D-06).

⁷ Initial Statement of Reasons, Public Hearing to Consider Amendments to the California Regulations for New 1997 and Later Off-Highway Recreational Vehicles and Engines, California ARB, October 23, 1998 (Docket A-2000-01, II-D-08).

TABLE I.F-3.—MARPOL ANNEX VI
NO_x STANDARDS—Continued

Engine speed (n = engine speed, rpm)	NO _x (g/kW-hr)
n ≥ 2000	9.8

After several years of negotiation, the Member States of the International Maritime Organization adopted a final version of Annex VI on September 26, 1997. As stipulated in Article 6 of the Agreement, the Annex will go into force when fifteen States, the combined merchant fleets of which constitute not less than 50 percent of the gross tonnage of the world's merchant shipping, have ratified it. As of today, three countries have ratified the Annex (Norway, Sweden, Singapore), representing about 7 percent of the world fleet.

Pending entry into force, ship owners and vessel manufacturers are expected to install compliant engines on relevant ships beginning with the date specified in Regulation 13, January 1, 2000. In addition, ship owners are expected to bring existing engines into compliance if the engines undergo a major conversion on or after that date.⁹ As defined in Regulation 13 of Annex VI, a major conversion is defined to include those situations when the engine is replaced by a new engine, it is substantially modified, or its maximum continuous rating is increased by more than 10 percent. To facilitate this process, and to allow engine manufacturers to certify their engines before the Annex goes into force, we set up a process for manufacturers to obtain a Statement of Voluntary Compliance.¹⁰ This document will be exchangeable for an Engine International Air Pollution Prevention (EIAPP) certificate once the Annex goes into effect for the United States.

II. Public Health and Welfare Effects of Emissions From Covered Engines

A. Background

This proposal contains regulatory strategies for three sets of new nonroad vehicles and engines that cause or contribute to air pollution but that have not been regulated under EPA's nonroad engine programs. The three sets of nonroad vehicles and engines are:

⁹ As defined in Regulation 13 of Annex VI, a major conversion means the engine is replaced by a new engine, it is substantially modified, or its maximum continuous rating is increased by more than 10 percent.

¹⁰ For more information about our voluntary certification program, see "guidance for Certifying to MARPOL Annex VI," VPCD-99-02. This letter is available on our website: <http://www.epa.gov/otca/regis/nonroad/marine/ci/imolettr.pdf>.

- **Large Industrial Spark Ignition Engines.** These are spark-ignition nonroad engines rated over 19 kW used in commercial applications. These include engines used in forklifts, electric generators, airport tugs, and a variety of other construction, farm, and industrial equipment. Many of these engines, such as those used in farm and construction equipment, are operated outdoors, predominantly during warmer weather and often in or near heavily-populated urban areas where they contribute to ozone formation and ambient CO and PM levels. These engines are also often operated in factories, warehouses, and large retail outlets throughout the year, where they contribute to high exposure levels to personnel who work with or near this equipment as well as to ozone formation and ambient CO and PM levels. For the purpose of this proposal, we are calling these "Large SI engines."

- **Nonroad Spark-Ignition Recreational Engines.** These are spark-ignition nonroad engines used primarily in recreational applications. These include off-highway motorcycles, all-terrain-vehicles and snowmobiles. Some of these engines, particularly those used on all-terrain vehicles, are increasingly used for commercial purposes within urban areas, especially for mowing lawns and hauling loads. These vehicles are typically used in suburban and rural areas, where they contribute to ozone formation and ambient CO, and PM levels. All these vehicles, and snowmobiles in particular, contribute to visibility impairment problems in our national and state parks. For the purpose of this proposal, we are calling this group of engines "recreational vehicles."

- **Marine Engines.** These are marine diesel engines that are used on recreational vessels such as yachts, cruisers, and other types of pleasure craft. Recreational marine engines are primarily used in warm weather and therefore contribute to ozone formation and PM levels, especially in marinas, which are often located in nonattainment areas.

Nationwide, these engines and vehicles are a significant source of mobile-source air pollution. As described in Section II.C, below, they currently account for about 13 percent of national mobile-source HC emissions, 6 percent of mobile-source CO emissions, 3 percent of mobile-source NO_x emissions, and 1 percent of mobile-source PM emissions. Recreational vehicles by themselves account for nearly 10 percent of national mobile-source HC emissions and about 3 percent of national mobile-source CO

emissions. Within national parks, snowmobiles are significant contributors to ambient concentrations of fine particulate matter, a leading component of visibility impairment. By reducing these emissions, the proposed standards would provide assistance to states facing ozone and CO air quality problems, which can cause a range of adverse health effects, especially in terms of respiratory impairment and related illnesses. States are required to develop plans to address visibility impairment in national parks, and the reductions proposed in this rule would assist states in those efforts.

In addition, the proposed standards would help reduce acute exposure to CO and air toxics for forklift operators, snowmobile users, national and state park attendants, and other people who may be at particular risk because they operate or work or are otherwise active for long periods of time in close proximity to this equipment. Emissions from these vehicles and equipment can be very high on a per engine basis. In addition, the equipment (e.g., forklifts) is often used in enclosed areas. Similarly, exposure can be intensified for snowmobile riders who follow a group of other rides along a trail, since those riders are exposed to the emissions of all the other snowmobiles riding ahead. As summarized below and explained in greater detail in the Draft Regulatory Support Document for this proposal, CO emissions have been directly associated with cardiovascular and other health problems, and many types of hydrocarbons are also air toxics.

The standards proposed in this document would require the use of cleaner emission-control technologies. For Large SI engines, we are proposing a two-phase program that will take fuel effects into account. The first phase consists of one set of standards that would apply to all engines regardless of fuel (i.e., gasoline, LPG, CNG). These standards are identical to those recently adopted by California Air Resources Board (CARB) and are based on a steady-state test. The second phase of standards is more stringent than the California standards. The numerical limits differ depending on fuel type and would require optimizing the same emission-control technologies used in Phase 1 but would be based on a transient duty test cycle. These standards would also include new requirements for evaporative emissions and engine diagnostics.

For marine engines, we are proposing to set new standards that would require recreational diesel marine engines to adopt the emission-control technology

that will be in use on commercial diesel marine engines.

For nonroad recreational vehicles, we are proposing standards that would require snowmobiles to use cleaner 2-stroke technologies (e.g., clean carburetion, electronic fuel injection). For off-highway motorcycles and all-terrain vehicles, we are proposing standards that would effectively require manufacturers to use more 4-stroke technology for most engines. A second phase of proposed standards for all-terrain vehicles is based on catalyst technology.

When the proposed emission standards are fully implemented in 2020, we expect a 79 percent reduction in HC emissions, 75 percent reduction in NO_x emissions, and 56 percent

reduction in CO emissions from these engines, equipment, and vehicles (see Section IX below for more details). These emission reductions will reduce ambient concentrations of ozone, CO, and PM fine, which is a health concern and contributes to visibility impairment. The standards will also reduce personal exposure for people who operate or who work with or are otherwise in close proximity to these engines and vehicles.

For the nonroad engines covered by this proposal, the Agency has already established in several previous actions that they cause or contribute to ozone or carbon monoxide pollution in more than one nonattainment area. In three actions in 1996, 1999, and 2000, we made separate determinations that each category of nonroad engines covered by

this proposal specifically contributes to ozone and CO nonattainment, and to adverse health effects associated with ambient concentrations of PM. These actions are summarized in Table II.A-1. In addition, pursuant to Section 213(a)(4) of the Act, we are proposing to find that nonroad engines, including construction equipment, farm tractors, boats, planes, locomotives, marine engines, and recreational vehicles (e.g., off-highway motorcycles, all-terrain-vehicles, and snowmobiles), significantly contribute to regional haze, and that these engines, particularly snowmobiles, are significant emitters of pollutants that are known to impair visibility in federal Class I areas. The discussion pertaining to this proposed finding is in Section II.D.1, below.

TABLE II.A-1.—SUMMARY OF NONROAD AIR QUALITY FINDINGS

Source	Date of finding	Pollutants covered	Emissions determined to contribute
CI Marine	December 29, 1999, 64 FR 73300 ..	Ozone, PM	HC+NO _x , PM, CO.
Large SI	December 7, 2000, 65 FR 76790	Ozone, CO, PM	HC+NO _x , CO, PM.
Recreational Vehicles	December 7, 2000, 65 FR 76790	Ozone, CO, PM	HC+NO _x , CO, PM.

B. What Are the Public Health and Welfare Effects Associated With Emissions From Nonroad Engines Subject to the Proposed Standards?

The engines and vehicles that would be subject to the proposed standards generate emissions of HC, CO, PM and air toxics that contribute to ozone and CO nonattainment as well as adverse health effects associated with ambient concentrations of PM and air toxics. Elevated emissions from those recreational vehicles that operate in national parks (e.g., snowmobiles) contribute to visibility impairment. This section summarizes the general health effects of these substances. National inventory estimates are set out in Section II.B. and estimates of the expected impact of the proposed control programs are described in Section IX. Interested readers are encouraged to refer to the Draft Regulatory Support Document for this proposal for more in-depth discussions.

1. Health and Welfare Effects Associated With Ground Level Ozone and Its Precursors

Volatile organic compounds (VOC) and NO_x are precursors in the photochemical reaction which forms tropospheric ozone. Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of VOCs and NO_x in the presence of heat and sunlight. Hydrocarbons (HC) are a large subset of VOC, and to reduce

mobile-source VOC levels we set maximum emissions limits for hydrocarbon and particulate matter emissions.

A large body of evidence shows that ozone can cause harmful respiratory effects including chest pain, coughing, and shortness of breath, which affect people with compromised respiratory systems most severely. When inhaled, ozone can cause acute respiratory problems; aggravate asthma; cause significant temporary decreases in lung function of 15 to over 20 percent in some healthy adults; cause inflammation of lung tissue; produce changes in lung tissue and structure; may increase hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses. Children and outdoor workers are likely to be exposed to elevated ambient levels of ozone during exercise and, therefore, are at a greater risk of experiencing adverse health effects. Beyond its human health effects, ozone has been shown to injure plants, which has the effect of reducing crop yields and reducing productivity in forest ecosystems.

There is strong and convincing evidence that exposure to ozone is associated with exacerbation of asthma-related symptoms. Increases in ozone concentrations in the air have been associated with increases in hospitalization for respiratory causes for

individuals with asthma, worsening of symptoms, decrements in lung function, and increased medication use, and chronic exposure may cause permanent lung damage. The risk of suffering these effects is particularly high for children and for people with compromised respiratory systems.

Ground level ozone today remains a pervasive pollution problem in the United States. In 1999, 90.8 million people (1990 census) lived in 31 areas designated nonattainment under the 1-hour ozone NAAQS.⁷³ This sharp decline from the 101 nonattainment areas originally identified under the Clean Air Act Amendments of 1990 demonstrates the effectiveness of the last decade's worth of emission-control programs. However, elevated ozone concentrations remain a serious public health concern throughout the nation.

Over the last decade, declines in ozone levels were found mostly in urban areas, where emissions are heavily influenced by controls on mobile sources and their fuels. Twenty-three metropolitan areas have realized a decline in ozone levels since 1989, but at the same time ozone levels in 11 metropolitan areas with 7 million

⁷³ National Air Quality and Emissions Trends Report, 1999, EPA, 2001, at Table A-19. This document is available at <http://www.epa.gov/oar/aqtrnd99/>. The data from the Trends report are the most recent EPA air quality data that have been quality assured. A copy of this table can also be found in Docket No. A-2000-01, Document No. II-A-64.

people have increased.⁷⁴ Regionally, California and the Northeast have recorded significant reductions in peak ozone levels, while four other regions (the Mid-Atlantic, the Southeast, the Central and Pacific Northwest) have seen ozone levels increase.

The highest ambient concentrations are currently found in suburban areas, consistent with downwind transport of emissions from urban centers. Concentrations in rural areas have risen to the levels previously found only in cities. Particularly relevant to this proposal, ozone levels at 17 of our National Parks have increased, and in 1998, ozone levels in two parks, Shenandoah National Park and the Great Smoky Mountains National Park, were 30 to 40 percent higher than the ozone NAAQS over part of the last decade.⁷⁵

To estimate future ozone levels, we refer to the modeling performed in conjunction with the final rule for our most recent heavy-duty highway engine and fuel standards.⁷⁶ We performed ozone air quality modeling for the entire Eastern U.S. covering metropolitan areas from Texas to the Northeast.⁷⁷ This ozone air quality model was based upon the same modeling system as was used in the Tier 2 air quality analysis, with the addition of updated inventory estimates for 2007 and 2030. The results of this modeling were examined for those 37 areas in the East for which EPA's modeling predicted exceedances in 2007, 2020, and/or 2030 and the current 1-hour design values are above the standard or within 10 percent of the standard. This photochemical ozone

modeling for 2020 predicts exceedances of the 1-hour ozone standard in 32 areas with a total of 89 million people (1999 census) after accounting for light- and heavy-duty on-highway control programs.⁷⁸ We expect the NO_x and HC control strategies contained in this proposal for nonroad engines will further assist state efforts already underway to attain and maintain the 1-hour ozone standard.

In addition to the health effects described above, there exists a large body of scientific literature that shows that harmful effects can occur from sustained levels of ozone exposure much lower than 0.125 ppm.⁷⁹ Studies of prolonged exposures, those lasting about 7 hours, show health effects from prolonged and repeated exposures at moderate levels of exertion to ozone concentrations as low as 0.08 ppm. The health effects at these levels of exposure include transient pulmonary function responses, transient respiratory symptoms, effects on exercise performance, increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital and emergency room visits, and transient pulmonary respiratory inflammation.

Prolonged and repeated ozone concentrations at these levels are common in areas throughout the country, and are found both in areas that are exceeding, and areas that are not exceeding, the 1-hour ozone standard. Areas with these high concentrations are more widespread than those in nonattainment for that 1-hour ozone standard. Monitoring data indicate that 333 counties in 33 states exceed these levels in 1997-99.⁸⁰ The Agency's most recent photochemical ozone modeling forecast that 111 million people are predicted to live in areas that are at risk of exceeding these moderate ozone levels for prolonged periods of time in 2020 after accounting for expected inventory reductions due

to controls on light- and heavy-duty on-highway vehicles.⁸¹

2. Health Effects Associated With Carbon Monoxide

Carbon monoxide (CO) is a colorless, odorless gas produced through the incomplete combustion of carbon-based fuels. Carbon monoxide enters the bloodstream through the lungs and reduces the delivery of oxygen to the body's organs and tissues. The health threat from CO is most serious for those who suffer from cardiovascular disease, particularly those with angina or peripheral vascular disease. Healthy individuals also are affected, but only at higher CO levels. Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, learning ability and performance of complex tasks.

High concentrations of CO generally occur in areas with elevated mobile-source emissions. Peak concentrations typically occur during the colder months of the year when mobile-source CO emissions are greater and nighttime inversion conditions are more frequent. This is due to the enhanced stability in the atmospheric boundary layer, which inhibits vertical mixing of emissions from the surface.

The current primary NAAQS for CO are 35 parts per million for the one-hour average and 9 parts per million for the eight-hour average. These values are not to be exceeded more than once per year. Air quality carbon monoxide value is estimated using EPA guidance for calculating design values. In 1999, 30.5 million people (1990 census) lived in 17 areas designated nonattainment under the CO NAAQS.⁸²

Snowmobiles, which have relatively high per engine CO emissions, can be a significant source of ambient CO levels in CO nonattainment areas. Several states that contain CO nonattainment areas also have large populations of registered snowmobiles. This is shown in Table II.B-1. A review of snowmobile trail maps indicates that snowmobiles are used in these CO nonattainment

⁷⁴ National Air Quality and Emissions Trends Report, 1998, March, 2000, at 28. This document is available at <http://www.epa.gov/aar/aqtrnd98/>. Relevant pages of this report can be found in Memorandum to Air Docket A-2000-01 from Jean Marie Revelt, September 5, 2001, Document No. II-A-63.

⁷⁵ National Air Quality and Emissions Trends Report, 1998, March, 2000, at 32. This document is available at <http://www.epa.gov/aar/aqtrnd98/>. Relevant pages of this report can be found in Memorandum to Air Docket A-2000-01 from Jean Marie Revelt, September 5, 2001, Document No. II-A-63.

⁷⁶ Additional information about this modeling can be found in our Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, document EPA420-R-00-026, December 2000, Docket No. 1-2000-01, Document No. II-A-13. This document is also available at <http://www.epa.gov/ataq/diesel.htm#documents>.

⁷⁷ We also performed ozone air quality modeling for the western United States but, as described further in the air quality technical support document, model predictions were well below corresponding ambient concentrations for our heavy-duty engine standards and fuel sulfur control rulemaking. Because of poor model performance for this region of the country, the results of the Western ozone modeling were not relied on for that rule.

⁷⁸ Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, US EPA, EPA420-R-00-026, December 2000, at II-14, Table II.A-2, Docket No. A-2000-01, Document Number II-A-13. This document is also available at <http://www.epa.gov/ataq/diesel.htm#documents>.

⁷⁹ Additional information about these studies can be found in Chapter 2 of "Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements," December 2000, EPA420-R-00-026, Docket No. A-2000-01, Document Number II-A-13. This document is also available at <http://www.epa.gov/ataq/diesel.htm#documents>.

⁸⁰ A copy of these data can be found in Air Docket A-2000-01, Document No. II-A-80.

⁸¹ Memorandum to Docket A-99-06 from Eric Ginsburg, EPA, "Summary of Model-Adjusted Ambient Concentrations for Certain Levels of Ground-Level Ozone over Prolonged Periods," November 22, 2000, at Table C, Control Scenario—2020 Populations in Eastern Metropolitan Counties with Predicted Daily 8-Hour Ozone greater than or equal to 0.080 ppm, Docket A-2000-01, Document Number II-B-13.

⁸² National Air Quality and Emissions Trends Report, 1999, EPA, 2001, at Table A-19. This document is available at <http://www.epa.gov/oar/aqtrnd99/>. The data from the Trends report are the most recent EPA air quality data that have been quality assured. A copy of this table can also be found in Docket No. A-2000-01, Document No. II-A-64.

areas or in adjoining counties.⁸³ These include the Mt. Spokane and Riverside trails near the Spokane, Washington CO nonattainment area; the Larimer trails near the Fort Collins, Colorado CO nonattainment area; and the Hyatt Lake, Lake of the Woods, and Cold Springs trails near the Klamath Falls and Medford, Oregon CO nonattainment

area. There are also trails in Missoula County, Montana that demonstrate snowmobile use in the Missoula, Montana CO nonattainment area. While Colorado has a large snowmobile population, the snowmobile trails are fairly distant from the Colorado Springs CO nonattainment areas. EPA requests comment on the volume and nature of

snowmobile use in these and other CO nonattainment areas. Of particular interest is information about the number of trails in and around CO nonattainment areas, the magnitude of snowmobile use on those trails, and the extent to which snowmobiles are used off-trail.⁸⁴

TABLE II.B-1.—SNOWMOBILE USE IN SELECTED CO NONATTAINMENT AREAS

City and State	CO nonattainment classification	1998 State snowmobile population ^a
Fairbanks, AK	Serious	12,997
Spokane, WA	Serious	32,274
Colorado Springs, CO	Moderate	28,000
Fort Collins, CO	Moderate	
Klamath Falls, OR	Moderate	13,426
Medford, OR	Moderate	
Missoula, MT	Moderate	14,361

^a Source: Letter from International Snowmobile Manufacturers Association to US-EPA, July 8, 1999, Docket A-2000-01, Document No. II-G.

Exceedances of the 8-hour CO standard were recorded in three of these seven CO nonattainment areas located in the northern portion of the country over the five year period from 1994 to 1999: Fairbanks, AK; Medford, OR; and Spokane, WA.⁸⁵ Given the variability in CO ambient concentrations due to weather patterns such as inversions, the absence of recent exceedances for some of these nonattainment areas should not be viewed as eliminating the need for further reductions to consistently attain and maintain the standard. A review of CO monitor data in Fairbanks from 1986 to 1995 shows that while median concentrations have declined steadily, unusual combinations of weather and emissions have resulted in elevated ambient CO concentrations well above the 8-hour standard of 9 ppm. Specifically, a Fairbanks monitor recorded average 8-hour ambient concentrations at 16 ppm in 1988, around 9 ppm from 1990 to 1992, and then a steady increase in CO ambient concentrations at 12, 14 and 16 ppm during some extreme cases in 1993, 1994 and 1995, respectively.⁸⁶

Nationally, significant progress has been made over the last decade to reduce CO emissions and ambient CO concentrations. Total CO emissions from all sources have decreased 16 percent from 1989 to 1998, and ambient CO concentrations decreased by 39 percent. During that time, while the mobile source CO contribution of the inventory remained steady at about 77 percent, the highway portion decreased from 62 percent of total CO emissions to 56 percent while the nonroad portion increased from 17 percent to 22 percent.⁸⁷ Over the next decade, we would expect there to be a minor decreasing trend from the highway segment due primarily to the more stringent standards for certain light-duty trucks (LDT2s).⁸⁸ CO standards for passenger cars and other light-duty trucks and heavy-duty vehicles did not change as a result of other recent rulemakings). As described in Section II.C, below, the engines subject to this rule currently account for about 7 percent of the mobile source CO inventory; this is expected to increase to 10 percent by 2020 without the

emission controls proposed in this action.

The state of Alaska recently submitted draft CO attainment SIPs to the Agency for the Fairbanks CO nonattainment area. Fairbanks is located in a mountain valley with a much higher potential for air stagnation than cities within the contiguous United States. Nocturnal inversions that give rise to elevated CO concentrations can persist 24-hours a day due to the low solar elevation, particularly in December and January. These inversions typically last from 2 to 4 days (Bradley et al., 1992), and thus inversions may continue during hours of maximum CO emissions from mobile sources. Despite the fact that snowmobiles are largely banned in CO nonattainment areas by the state, the state estimated that snowmobiles contributed 0.3 tons/day in 1995 to Fairbanks' CO nonattainment area or 1.2 percent of a total inventory of 23.3 tons per day in 2001.⁸⁹ While Fairbanks has made significant progress in reducing ambient CO concentrations, existing climate conditions make achieving and maintaining attainment challenging. Fairbanks failed to attain the CO NAAQS by the applicable deadline of

⁸³ St. Paul, Minnesota was recently reclassified as being in attainment but is still considered a maintenance area. There is also a significant population of snowmobiles in Minnesota, with snowmobile trails in Washington County.

⁸⁴ The trail maps consulted for this proposal can be found in Docket No. A-2000-01, Document No. II-A-65.

⁸⁵ Technical Memorandum to Docket A-2000-01 from Drew Kodjak, Attorney-Advisor, Office of Transportation and Air Quality, "Air Quality Information for Selected CO Nonattainment Areas," July 27, 2001, Docket Number A-2000-01, Document Number II-B-18.

⁸⁶ Air Quality Criteria for Carbon Monoxide, US EPA, EPA 600/P-99/001F, June 2000, at 3-38, Figure 3-32 (Federal Bldg, AIRS Site 020900002). Air Docket A-2000-01, Document Number II-A-29. This document is also available at <http://www.epa.gov/ncea/coabstract.htm>.

⁸⁷ National Air Quality and Emissions Trends Report, 1998, March, 2000; this document is available at <http://www.epa.gov/oar/aqtrnd98/>. National Air Pollutant Emission Trends, 1900-1998 (EPA-454/R-00-002), March, 2000. These documents are available at Docket No. A-2000-01, Document No. II-A-72. See also Air Quality Criteria for Carbon Monoxide, US EPA, EPA 600/P-99/001F, June 2000, at 3-10. Air Docket A-2000-

01, Document Number II-A-29. This document is also available at <http://www.epa.gov/ncea/coabstract.htm>.

⁸⁸ LDT2s are light light-duty trucks greater than 3750 lbs. loaded vehicle weight, up through 6000 gross vehicle weight rating.

⁸⁹ Draft Anchorage Carbon Monoxide Emission Inventory and Year 2000 Attainment Projections, Air Quality Program, May 2001, Docket Number A-2000-01, Document II-A-40; Draft Fairbanks 1995-2001 Carbon Monoxide Emissions Inventory, June 1, 2001, Docket Number A-2000-01, Document II-A-39.

December 21, 2000, and EPA approved a one-year extension in May of 2001.⁹⁰

In addition to the health effects that can result from exposure to carbon monoxide, this pollutant also can contribute to ground level ozone formation.⁹¹ Recent studies in atmospheric chemistry in urban environments suggest CO can react with hydrogen-containing radicals, leaving fewer of these to combine with non-methane hydrocarbons and thus leading to increased levels of ozone. Few analyses have been performed that estimate these effects, but a study of an ozone episode in Atlanta, GA in 1988 found that CO accounted for about 17.5 percent of the ozone formed (compared to 82.5 percent for volatile organic compounds). While different cities may have different results, the effects of CO emissions on ground level ozone are not insignificant. The engines that are the subject of the proposed standards are contributors to these effects in urban areas, particularly because their per engine emissions are so high. For example, CO emissions from an off-highway motorcycle are high relative to a passenger car, (32 g/mi compared to 4.2 g/mi). The CO controls contained in this proposal will further assist state efforts already underway to attain and maintain the CO NAAQS.

3. Health and Welfare Effects Associated With Particulate Matter

Nonroad engines and vehicles that would be subject to the proposed standards contribute to ambient particulate matter (PM) levels in two ways. First, they contribute through direct emissions of particulate matter. Second, they contribute to indirect formation of PM through their emissions of organic carbon, especially HC. Organic carbon accounts for between 27 and 36 percent of fine particle mass depending on the area of the country.

Particulate matter represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. All particles equal to and less than 10 microns are called PM₁₀. Fine particles can be generally defined as those particles with an aerodynamic diameter of 2.5 microns or

less (also known as PM_{2.5}), and coarse fraction particles are those particles with an aerodynamic diameter greater than 2.5 microns, but equal to or less than a nominal 10 microns.

Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Scientific studies suggest a likely causal role of ambient particulate matter (which is attributable to several sources including mobile sources) in contributing to a series of health effects.⁹² The key health effects categories associated with ambient particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), aggravated asthma, acute respiratory symptoms, including aggravated coughing and difficult or painful breathing, chronic bronchitis, and decreased lung function that can be experienced as shortness of breath. Observable human noncancer health effects associated with exposure to diesel PM include some of the same health effects reported for ambient PM such as respiratory symptoms (cough, labored breathing, chest tightness, wheezing), and chronic respiratory disease (cough, phlegm, chronic bronchitis and suggestive evidence for decreases in pulmonary function). Symptoms of immunological effects such as wheezing and increased allergenicity are also seen. Exposure to fine particles is closely associated with such health effects as premature mortality or hospital admissions for cardiopulmonary disease.

PM also causes adverse impacts to the environment. Fine PM is the major cause of reduced visibility in parts of the United States, including many of our national parks. Other environmental impacts occur when particles deposit onto soils, plants, water or materials. For example, particles containing nitrogen and sulphur that deposit on to land or water bodies may change the nutrient balance and acidity of those environments. Finally, PM causes soiling and erosion damage to materials, including culturally important objects such as carved monuments and statues. It promotes and accelerates the corrosion of metals, degrades paints,

and deteriorates building materials such as concrete and limestone.

The NAAQS for PM₁₀ were established in 1987. According to these standards, the short term (24-hour) standard of 150 µg/m³ is not to be exceeded more than once per year on average over three years. The long-term standard specifies an expected annual arithmetic mean not to exceed 50 µg/m³ over three years. The most recent PM₁₀ monitoring data indicate that 14 designated PM₁₀ nonattainment areas with a projected population of 23 million violated the PM₁₀ NAAQS in the period 1997–99. In addition, there are 25 unclassifiable areas that have recently recorded ambient concentrations of PM₁₀ above the PM₁₀ NAAQS.⁹³

Current 1999 PM_{2.5} monitored values, which cover about a third of the nation's counties, indicate that at least 40 million people live in areas where long-term ambient fine particulate matter levels are at or above 16 µg/m³ (37 percent of the population in the areas with monitors).⁹⁴ This 16 µg/m³ threshold is the low end of the range of long term average PM_{2.5} concentrations in cities where statistically significant associations were found with serious health effects, including premature mortality.⁹⁵ To estimate the number of people who live in areas where long-term ambient fine particulate matter levels are at or above 16 µg/m³ but for which there are no monitors, we can use modeling. According to our national modeled predictions, there were a total of 76 million people (1996 population) living in areas with modeled annual average PM_{2.5} concentrations at or above 16 µg/m³ (29 percent of the population).⁹⁶

To estimate future PM_{2.5} levels, we refer to the modeling performed in

⁹⁰ EPA adopted a policy in 1996 that allows areas with PM₁₀ exceedances that are attributable to natural events to retain their designation as unclassifiable if the State is taking all reasonable measures to safeguard public health regardless of the sources of PM₁₀ emissions.

⁹¹ Memorandum to Docket A-99-06 from Eric O. Ginsburg, Senior Program Advisor, "Summary of 1999 Ambient Concentrations of Fine Particulate Matter," November 15, 2000. Air Docket A-2000-01, Document No. II-B-12.

⁹² EPA (1996) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper, EPA-452/R-96-013. Docket Number A-99-06, Documents Nos. II-A-18, 19, 20, and 23. The particulate matter air quality criteria documents are also available at <http://www.epa.gov/ncea/partmatt.htm>.

⁹³ Memorandum to Docket A-99-06 from Eric O. Ginsburg, Senior Program Advisor, "Summary of Absolute Modeled and Model-Adjusted Estimates of Fine Particulate Matter for Selected Years," December 6, 2000. Air Docket A-2000-01, Document No. II-B-14.

⁹⁰ 66 FR 28836, May 25, 2001. Clean Air Act Promulgation of Attainment Date Extension for the Fairbanks North Star Borough Carbon Monoxide Nonattainment Area, AK, Direct Final Rule.

⁹¹ U.S. EPA, Air Quality Criteria for Carbon Monoxide, EPA 600/P-99-001F, June 2000, Section 3.2.3. Air Docket A-2000-01, Document Number II-A-29. This document is also available at <http://www.epa.gov/ncea/coabstract.htm>.

⁹² EPA (1996) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper, EPA-452/R-96-013. Docket Number A-99-06, Documents Nos. II-A-18, 19, 20, and 23. The particulate matter air quality criteria documents are also available at <http://www.epa.gov/ncea/partmatt.htm>.

conjunction with the final rule for our most recent heavy-duty highway engine and fuel standards, using EPA's Regulatory Model System for Aerosols and Deposition (REMSAD).⁹⁷ The most appropriate method of making these projections relies on the model to predict changes between current and future states. Thus, we have estimated future conditions only for the areas with current PM_{2.5} monitored data (which cover about a third of the nation's counties). For these counties, REMSAD predicts the current level of 37 percent

of the population living in areas where fine PM levels are at or above 16 µg/m³ to increase to 49 percent in 2030.⁹⁸

Emissions of HCs from snowmobiles contribute to secondary formation of fine particulate matter which can cause a variety of adverse health and welfare effects, including visibility impairment discussed in Section II.D.1(b) below. For 20 counties across nine states, snowmobile trails are found within or near counties that registered ambient PM 2.5 concentrations at or above 15 µg/m³, the level of the revised national

ambient air quality standard for fine particles.⁹⁹ Fine particles may remain suspended for days or weeks and travel hundreds to thousands of kilometers, and thus fine particles emitted or created in one county may contribute to ambient concentrations in a neighboring county.¹⁰⁰ These counties are listed in Table II.B-2. To obtain the information about snowmobile trails contained in Table II.B-2, we consulted snowmobile trail maps that were supplied by various states.¹⁰¹

TABLE II.B-2.—COUNTIES WITH ANNUAL PM_{2.5} LEVELS ABOVE 16 µg/m³ AND SNOWMOBILE TRAILS

State and PM _{2.5} exceedance county	County with snowmobile trails	Proximity to PM _{2.5} exceedance county
Ohio:		
Mahoning	Mahoning.	
Trumbull	Trumbull.	
Summit	Summit.	
Montgomery	Montgomery.	
Portage	Portage.	
Franklin	Delaware	Borders North.
Marshall/Ohio (WV)	Belmont	Borders West.
Montana	Lincoln	Lincoln
California:		
Tulare	Tulare.	
Butte	Butte.	
Fresno	Fresno.	
Kern	Kern.	
Minnesota:		
Washington	Washington.	
Wright	Wright.	
Wisconsin:		
Waukesha	Waukesha.	
Milwaukee	Milwaukee.	
Oregon:		
Jackson	Douglas	Borders NNE.
Klamath	Douglas	Borders North.
Pennsylvania: Washington	Layette	Borders East.
	Somerset.	
Illinois: Rock Island	Rock Island	
	Henry	Borders East.
Iowa: Rock Island (IL)	Dubuque	Borders West.

We expect the PM control strategies contained in this proposal would further assist state efforts already underway to attain and maintain the PM NAAQS.

4. Health Effects Associated With Air Toxics

In addition to the human health and welfare impacts described above, emissions from the engines covered by this proposal also contain several other substances that are known or suspected human or animal carcinogens, or have serious noncancer health effects. These

include benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and acrolein. The health effects of these air toxics are described in more detail in Chapter 1 of the Draft Regulatory Support Document for this rule. Additional information can also be found in the Technical Support

⁹⁷ Additional information about the Regulatory Model System for Aerosols and Deposition (REMSAD) and our modeling protocols can be found in our Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, document EPA420-R-00-026, December 2000. Docket No. A-2000-01, Document No. A-II-13. This document is also available at <http://www.epa.gov/otoq/diesel.htm#documents>.

⁹⁸ Technical Memorandum, EPA Air Docket A-99-06, Eric O. Ginsburg, Senior Program Advisor,

Emissions Monitoring and Analysis Division, OAQPS, Summary of Absolute Modeled and Model-Adjusted Estimates of Fine Particulate Matter for Selected Years, December 6, 2000, Table P-2. Docket Number 2000-01, Document Number II-B-14.

⁹⁹ Memo to file from Terence Fitz-Simons, OAQPS, Scott Mathias, OAQPS, Mike Rizzo, Region 5, "Analyses of 1999 PM Data for the PM NAAQS Review," November 17, 2000, with attachment B, 1999 PM_{2.5} Annual Mean and 98th Percentile 24-

Hour Average Concentrations. Docket No. A-2000-01, Document No. II-B-17.

¹⁰⁰ Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment for Scientific and Technical Information, OAQPS Staff Paper, EPA-452/R-96-013, July, 1996, at IV-7.

¹⁰¹ The trail maps consulted for this proposal can be found in Docket No. A-2000-01, Document No. II-A-65.

Document for our final Mobile Source Air Toxics rule.¹⁰²

The hydrocarbon controls contained in this proposal are expected to reduce exposure to air toxics and therefore may help reduce the impact of these engines on cancer and noncancer health effects.

C. What Is the Inventory Contribution From the Nonroad Engines and Vehicles That Would Be Subject to This Proposal?

The contribution of emissions from the nonroad engines and vehicles that would be subject to the proposed standards to the national inventories of pollutants that are associated with the health and public welfare effects described in Section II.B are considerable. To estimate nonroad engine and vehicle emission contributions, we used the latest version of our NONROAD emissions model. This model computes nationwide, state, and county emission levels for a wide variety of nonroad engines, and uses information on emission rates, operating data, and population to determine annual emission levels of various pollutants. A more detailed description of the model and our estimation

methodology can be found in the Chapter 6 of the Draft Regulatory Support Document.

Baseline emission inventory estimates for the year 2000 for the categories of engines and vehicles covered by this proposal are summarized in Table II.C-1. This table shows the relative contributions of the different mobile-source categories to the overall national mobile-source inventory. Of the total emissions from mobile sources, the categories of engines and vehicles covered by this proposal contribute about 13 percent, 3 percent, 6 percent, and 1 percent of HC, NO_x, CO, and PM emissions, respectively, in the year 2000. The results for industrial SI engines indicate they contribute approximately 3 percent to HC, NO_x, and CO emissions from mobile sources. The results for land-based recreational engines reflect the impact of the significantly different emissions characteristics of two-stroke engines. These engines are estimated to contribute 10 percent of HC emissions and 3 percent of CO from mobile sources. Recreational CI marine contribute less than 1 percent to NO_x

mobile source inventories. When only nonroad emissions are considered, the engines and vehicles that would be subject to the proposed standards would account for a larger share.

Our draft emission projections for 2020 for the nonroad engines and vehicles subject to this proposal show that emissions from these categories are expected to increase over time if left uncontrolled. The projections for 2020 are summarized in Table II.C-2 and indicate that the categories of engines and vehicles covered by this proposal are expected to contribute 33 percent, 9 percent, 9 percent, and 2 percent of HC, NO_x, CO, and PM emissions in the year 2020. Population growth and the effects of other regulatory control programs are factored into these projections. The relative importance of uncontrolled nonroad engines is higher than the projections for 2000 because there are already emission control programs in place for the other categories of mobile sources which are expected to reduce their emission levels. The effectiveness of all control programs is offset by the anticipated growth in engine populations.

TABLE II.C-1.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2000

[Thousand short tons]

Category	NO _x		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Total for engines subject to proposed standards	343	2.6	985	12.9	4,870	6.3	8.3	1.2
Highway Motorcycles	8	0.1	84	1.1	329	0.4	0.4	0.1
Nonroad Industrial SI > 19 kW	306	2.3	247	3.2	2,294	3.0	1.6	0.2
Recreational SI	13	0.1	737	9.7	2,572	3.3	5.7	0.8
Recreation Marine CI	24	0.2	1	0.0	4	0.0	1	0.1
Marine SI Evap	0	0.0	89	1.2	0	0.0	0	0.0
Marine SI Exhaust	32	0.2	708	9.3	2,144	2.8	38	5.4
Nonroad SI < 19 kW	106	0.8	1,460	19.1	18,359	23.6	50	7.2
Nonroad CI	2,625	19.5	316	4.1	1,217	1.6	253	36.2
Commercial Marine CI	977	7.3	30	0.4	129	0.2	41	5.9
Locomotive	1,192	8.9	47	0.6	119	0.2	30	4.3
Total Nonroad	5,275	39	3,635	48	26,838	35	420	60
Total Highway	7,981	59	3,811	50	49,811	64	240	34
Aircraft	178	1	183	2	1,017	1	39	6
Total Mobile Sources	13,434	100	7,629	100	77,666	100	699	100
Total Man-Made Sources	24,538		18,575		99,745		3,095	
Mobile Source percent of Total Man-Made Sources	55		41		78		23	

¹⁰² See our Mobile Source Air Toxics final rulemaking, 66 FR 17230, March 29, 2001, and the

Technical Support Document for that rulemaking.

Docket No. A-2000-01, Documents Nos. II-A-42 and II-A-30.

TABLE II.C-2.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2020
[Thousand short tons]

Category	NO _x		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Total for engines subject to proposed standards	552	8.9	2,055	33.4	8,404	9.4	11.4	1.8
Highway Motorcycles	14	0.2	144	2.3	569	0.6	0.8	0.1
Nonroad Industrial SI > 19 kW	486	7.8	348	5.7	2,991	3.3	2.4	0.4
Recreational SI	27	0.4	1,706	27.7	5,407	3.3	7.5	1.2
Recreation Marine CI	39	0.6	1	0.0	6	0.0	1.5	0.2
Marine SI Evap	0	0.0	102	1.4	0	0.0	0	0.0
Marine SI Exhaust	58	0.9	284	4.6	1,985	2.2	28	4.4
Nonroad SI < 19 kW	106	1.7	986	16.0	27,352	30.5	77	12.2
Nonroad CI	1,791	28.8	142	2.3	1,462	1.6	261	41.3
Commercial Marine CI	819	13.2	35	0.6	160	0.2	46	7.3
Locomotive	611	9.8	35	0.6	119	0.1	21	3.3
Total Nonroad	3,937	63	3,639	59	39,482	44	444	70
Total Highway	2,050	33	2,278	37	48,903	54	145	23
Aircraft	232	4	238	4	1,387	2	43	7
Total Mobile Sources	6,219	100	6,155	100	89,772	100	632	100
Total Man-Made Sources	16,195		16,215		113,440		3,016	
Mobile Source percent of Total Man-Made Sources	38		38		79		21	

D. Regional and Local-Scale Public Health and Welfare Effects

The previous section describes national-scale adverse public health effects associated with the nonroad engines and vehicles covered by this proposal. This section describes significant adverse health and welfare effects arising from the usage patterns of snowmobiles, large SI engines, and gasoline marine engines on the regional and local scale. Studies suggest that emissions from these engines can be concentrated in specific areas, leading to elevated ambient concentrations of particular pollutants and associated elevated personal exposures to operators and by-standers. Recreational vehicles, and particularly snowmobiles, are typically operating in rural areas such as national parks and wilderness areas, and emissions from these vehicles contribute to ambient particulate matter which is a leading component of visibility impairment.

1. Health and Welfare Effects Related to Snowmobiles

In this section, we describe more localized human health and welfare effects associated with snowmobile emissions: visibility impairment and personal exposure to air toxics and CO. We describe the contribution of snowmobile HC emissions to secondary formation of fine particles, which are the leading component of visibility impairment and adverse health effects

related to ambient PM_{2.5} concentrations greater than 16 ug/m³. We also discuss personal exposure to CO emissions and air toxics. Gaseous air toxics are components of hydrocarbons, and CO personal exposure measurements suggest that snowmobile riders and bystanders are exposed to unhealthy levels of gaseous air toxics (e.g., benzene) and CO.

a. *Nonroad Engines and Regional Haze.* The Clean Air Act established special goals for improving visibility in many national parks, wilderness areas, and international parks. In the 1977 amendments to the Clean Air Act, Congress set as a national goal for visibility the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution" (CAA section 169A(a)(1)). The Amendments called for EPA to issue regulations requiring States to develop implementation plans that assure "reasonable progress" toward meeting the national goal (CAA Section 169A(a)(4)). EPA issued regulations in 1980 to address visibility problems that are "reasonably attributable" to a single source or small group of sources, but deferred action on regulations related to regional haze, a type of visibility impairment that is caused by the emission of air pollutants by numerous emission sources located across a broad geographic region. At that time, EPA

acknowledged that the regulations were only the first phase for addressing visibility impairment. Regulations dealing with regional haze were deferred until improved techniques were developed for monitoring, for air quality modeling, and for understanding the specific pollutants contributing to regional haze.

In the 1990 Clean Air Act amendments, Congress provided additional emphasis on regional haze issues (see CAA section 169B). In 1999 EPA finalized a rule that calls for States to establish goals and emission reduction strategies for improving visibility in all 156 mandatory Class I national parks and wilderness areas. In that rule, EPA also encouraged the States to work together in developing and implementing their air quality plans. The regional haze program is designed to improve visibility and air quality in our most treasured natural areas. At the same time, control strategies designed to improve visibility in the national parks and wilderness areas will improve visibility over broad geographic areas.

Regional haze is caused by the emission from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources. Visibility impairment is caused by pollutants (mostly fine particles and precursor gases) directly emitted to the

atmosphere by several activities (such as electric power generation, various industry and manufacturing processes, truck and auto emissions, construction activities, etc.). These gases and particles scatter and absorb light, removing it from the sight path and creating a hazy condition.

Some fine particles are formed when gases emitted to the air form particles as they are carried downwind (examples include sulfates, formed from sulfur dioxide, and nitrates, formed from nitrogen oxides). These activities generally span broad geographic areas and fine particles can be transported great distances, sometimes hundreds or thousands of miles. Consequently, visibility impairment is a national problem. Without the effects of pollution a natural visual range is approximately 140 miles in the West and 90 miles in the East. However, fine particles have significantly reduced the range that people can see and in the West the current range is 33–90 miles and in the East it is only 14 to 24 miles.

Because of evidence that fine particles are frequently transported hundreds of miles, all 50 states, including those that do not have Class I areas, will have to participate in planning, analysis and, in many cases, emission control programs under the regional haze regulations. Even though a given State may not have any Class I areas, pollution that occurs in that State may contribute to impairment in Class I areas elsewhere. The rule encourages states to work together to determine whether or how much emissions from sources in a given state affect visibility in a downwind Class I area.

The regional haze program calls for states to establish goals for improving visibility in national parks and wilderness areas to improve visibility on the haziest 20 percent of days and to ensure that no degradation occurs on the clearest 20 percent of days. The rule requires states to develop long-term strategies including enforceable measures designed to meet reasonable progress goals. Under the regional haze

program, States can take credit for improvements in air quality achieved as a result of other Clean Air Act programs, including national mobile-source programs.

Nonroad engines (including construction equipment, farm tractors, boats, planes, locomotives, recreational vehicles, and marine engines) contribute significantly to regional haze. This is because there are nonroad engines in all of the states, and their emissions contain precursors of fine PM and organic carbon that are transported and contribute to the formation of regional haze throughout the country and in Class I areas specifically. As illustrated in Table II.D–1, nonroad engines are expected to contribute 15 percent of national VOC emissions, 23 percent of national NO_x emissions, 6 percent of national SO_x emissions, and 14 percent of national PM₁₀ emissions. Snowmobiles alone are estimated to emit 208,926 tons of total hydrocarbons (THC), 1,461 tons of NO_x, 2,145 tons of SO_x, and 5,082 tons of PM in 2007.

TABLE II.D–1.—NATIONAL EMISSIONS OF VARIOUS POLLUTANTS—2007

[Thousands short tons]

Source	VOC		NO _x		SO _x		PM ₁₀	
	Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent
Heavy-Duty Highway	413	3	2,969	14	24	0	115	4
Light-Duty Highway	2,596	18	2,948	14	24	0	82	3
Nonroad	2,115	15	4,710	23	1,027	6	407	14
Electric General	35	0	4,254	21	10,780	63	328	12
Point	1,639	11	3,147	15	3,796	22	1,007	36
Area	7,466	52	2,487	12	1,368	8	874	31
Total	14,265		20,516		17,019		2,814	

b. Snowmobiles and Visibility Impairment. As noted above, EPA issued regulations in 1980 to address Class I area visibility impairment that is “reasonably attributable” to a single source or small group of sources. In 40 CFR Part 51.301 of the visibility regulations, visibility impairment is defined as “any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.” States are required to develop implementation plans that include long-term strategies for improving visibility in each class I area. The long-term strategies under the 1980 regulations should consist of measures to reduce impacts from local sources and groups of sources that contribute to poor air quality days in the class I area. Types of impairment covered by these regulations includes layered hazes and visible plumes. While these kinds of

visibility impairment can be caused by the same pollutants and processes as those that cause regional haze, they generally are attributed to a smaller number of sources located across a smaller area. The Clean Air Act and associated regulations call for protection of visibility impairment in class I areas from localized impacts as well as broader impacts associated with regional haze.

Visibility and particle monitoring data are available for 8 Class I areas where snowmobiles are commonly used. These are: Acadia, Boundary Waters, Denali, Mount Rainier, Rocky Mountain, Sequoia and Kings Canyon, Voyageurs, and Yellowstone.¹⁰³ Visibility and fine particle data for these parks are set out

¹⁰³ No data were available at five additional parks where snowmobiles are also commonly used: Black Canyon of the Gunnison, CO, Grant Teton, WY, Northern Cascades, WA, Theodore Roosevelt, ND, and Zion, UT.

in Table II.D–2. This table shows the number of monitored days in the winter that fell within the 20-percent haziest days for each of these eight parks. Monitors collect data two days a week for a total of about 104 days of monitored values. Thus, for a particular site, a maximum of 21 worst possible days of these 104 days with monitored values constitute the set of 20-percent haziest days during a year which are tracked as the primary focus of regulatory efforts.¹⁰⁴ With the exception of Denali in Alaska, we defined the snowmobile season as January 1 through March 15 and December 15 through December 31 of the same calendar year, consistent with the methodology used in the Regional Haze Rule, which is calendar-year based. For Denali in

¹⁰⁴ Letter from Debra C. Miller, Data Analyst, National Park Service, to Drew Kodjak, August 22, 2001. Docket No. A–2000–01, Document Number. II–B–28.

Alaska, the snowmobile season is October 1 to April 30. The Agency

would be interested in comments from the public on the start and end dates for

the typical snowmobile season at each of these national parks.

TABLE II.D-2.—WINTER DAYS THAT FALL WITHIN THE 20 PERCENT HAZIEST DAYS AT NATIONAL PARKS USED BY SNOWMOBILES

NPS Unit	State(s)	Number of sampled wintertime days within 20 percent haziest days (maximum of 21 sampled days)			
		1996	1997	1998	1999
Acadia NP	ME	4	4	2	1
Denali NP and Preserve	AK	10	10	12	9
Mount Rainier NP	WA	1	3	1	1
Rocky Mountain NP	CO	2	1	2	1
Sequoia and Kings Canyon NP	CA	4	9	1	8
Voyageurs NP (1989-1992)	MN	1989	1990	1991	1992
		3	4	6	8
—Boundary Waters USFS Wilderness Area (close to Voyageurs with recent data).	MN	2	5	1	5
Yellowstone NP	ID, MT, WY	0	2	0	0

Source: Letter from Debra C. Miller, Data Analyst, National Park Service, to Drew Kodjak, August 22, 2001. Docket No. A-2000-01, Document Number. II-B-28.

The information presented in Table II.D-2 shows that visibility data support a conclusion that there are at least eight Class I Areas (7 in National Parks and one in a Wilderness Area) frequented by snowmobiles with one or more wintertime days within the 20-percent haziest days of the year. For example, Rocky Mountain National Park in Colorado was frequented by about 27,000 snowmobiles during the 1998-1999 winter. Of the monitored days characterized as within the 20-percent haziest monitored days, two (2) of those days occurred during the wintertime when snowmobile emissions such as hydrocarbons contributed to visibility impairment. According to the National Park Service, "[s]ignificant differences in haziness occur at all eight sites between the averages of the clearest and haziest days. Differences in mean standard visual range on the clearest and haziest days fall in the approximate range of 115-170 km."¹⁰⁵

Ambient concentrations of fine particles are the primary pollutant responsible for visibility impairment. Five pollutants are largely responsible for the chemical composition of fine particles: sulfates, nitrates, organic carbon particles, elemental carbon, and crustal material. Hydrocarbon emissions

from automobiles, trucks, snowmobiles, and other industrial processes are common sources of organic carbon. The organic carbon fraction of fine particles ranges from 47 percent in Western areas such as Denali National Park, to 28 percent in Rocky Mountain National Park, to 13 percent in Acadia National Park.¹⁰⁶

The contribution of snowmobiles to elemental carbon and nitrates is small. Their contribution to sulfates is a function of fuel sulfur and is small and will decrease even more as the sulfur content of their fuel decreases due to our recently finalized fuel sulfur requirements. In the winter months, however, hydrocarbon emissions from snowmobiles can be significant, as indicated in Table II.D-3, and these HC emissions can contribute significantly to the organic carbon fraction of fine particles which are largely responsible for visibility impairment. This is because they are typically powered by two-stroke engines that emit large amounts of hydrocarbons. In Yellowstone, a park with high snowmobile usage during the winter months, snowmobile hydrocarbon emissions can exceed 500 tons per year, as much as several large stationary sources. Other parks with less

snowmobile traffic are less impacted by these hydrocarbon emissions.¹⁰⁷

Table II.D-3 shows modeled tons of four pollutants during the winter season in five Class I national parks for which we have estimates of snowmobile use. The national park areas outside of Denali in Alaska are open to snowmobile operation in accordance with special regulations (36 CFR Part 7). Denali National Park permits snowmobile operation by local rural residents engaged in subsistence uses (36 CFR Part 13). Emission calculations are based on an assumed 2 hours of use per snowmobile visit at 16 hp with the exception of Yellowstone where 4 hours of use at 16 hp was assumed. The emission factors used to estimate these emissions are identical to those used by the NONROAD model. Two-stroke snowmobile emission factors are: 111 g/hp-hr HC, 296 g/hp-hr CO, 0.86 g/hp-hr NO_x, and 2.7 g/hp-hr PM. These emission factors are based on several engine tests performed by the International Snowmobile Manufacturers Association (ISMA) and the Southwest Research Institute (SwRI). These emission factors are still under review, and the emissions estimates may change pending the outcome of that review.

¹⁰⁵ Letter from Debra C. Miller, Data Analyst, National Park Service, to Drew Kodjak, August 22, 2001. Docket No. A-2000-01, Document Number. II-B-28.

¹⁰⁶ Letter from Debra C. Miller, Data Analyst, National Park Service, to Drew Kodjak, August 22, 2001. Docket No. A-2000-01, Document Number. II-B-28.

¹⁰⁷ Technical Memorandum, Aaron Worstell, Environmental Engineer, National Park Service, Air Resources Division, Denver, Colorado, particularly Table 1. Docket No. A-2000-01, Document Number II-C-178.

TABLE II.D-3.—WINTER SEASON SNOWMOBILE EMISSIONS
[Tons; 1999 Winter Season]

NPS unit	HC	CO	NO _x	PM
Denali NP & Preserve	>9.8	>26.1	>0.08	>0.24
Grand Teton NP	13.7	36.6	0.1	0.3
Rocky Mountain NP	106.7	284.7	0.8	2.6
Voyageurs NP	138.5	369.4	1.1	3.4
Yellowstone NP	492.0	1,311.9	3.8	12.0

Source: Letter from Aaron J. Worstell, Environmental Engineer, National Park Service, Air Resources Division, to Drew Kodjak, August 21, 2001, particularly Table 1. Docket No. A-2000-01, Document No. II-G-178.

Inventory analysis performed by the National Park Service for Yellowstone National Park suggests that snowmobile emissions can be a significant source of total annual mobile source emissions for the park year round. Table II.D-4 shows that in the 1998 winter season snowmobiles contributed 64 percent, 39 percent, and 30 percent of HC, CO, and PM emissions.¹⁰⁸ It should be noted that the snowmobile emission factors used to

estimate these contributions are currently under review, and the snowmobile emissions may be revised down. However, when the emission factors used by EPA in its NONROAD model are used, the contribution of snowmobiles to total emissions in Yellowstone remains significant: 59 percent, 33 percent, and 45 percent of HC, CO and PM emissions. The University of Denver used remote-

sensing equipment to estimate snowmobile HC emissions at Yellowstone during the winter of 1998-1999, and estimated that snowmobiles contribute 77% of annual hydrocarbon emissions at the park.¹⁰⁹ The portion of wintertime emissions attributable to snowmobiles is even higher, since all snowmobile emissions occur during the winter months.

TABLE II.D-4.—1998 ANNUAL HC EMISSIONS (TPY), YELLOWSTONE NATIONAL PARK

Source:	HC		CO		NO _x		PM	
	TPY	%	TPY	%	TPY	%	TPY	%
Coaches	2.69	0%	24.29	1%	0.42	0%	0.01	0%
Autos	307.17	33%	2,242.12	54%	285.51	88%	12.20	60%
RVs	15.37	2%	269.61	6%	24.33	7%	0.90	4%
Snowmobiles	596.22	64%	1,636.44	39%	1.79	1%	6.07	30%
Buses	4.96	1%	18.00	0%	13.03	4%	1.07	5%
Total	926.4		4,190.46		325.08		20.25	

Source: National Park Service, February 2000. Air Quality Concerns Related to Snowmobile Usage in National Parks. Air Docket A-2000-01, Document No. II-A-44.

The information presented in this discussion indicates that snowmobiles are significant emitters of pollutants that are known to contribute to visibility impairment in some Class I areas. Annual and particularly wintertime hydrocarbon emissions from snowmobiles are high in the five parks considered in Table II.D-4, with two parks having HC emissions nearly as high as Yellowstone (Rocky Mountain and Voyageurs). The proportion of snowmobile emissions to emissions from other sources affecting air quality in these parks is likely to be similar to that in Yellowstone.

c. Snowmobiles and personal exposure to air toxics and CO. Snowmobile users can be exposed to high air toxic and CO emissions, both because they sit very close to the vehicle's exhaust port and because it is

common for them to ride their vehicles on groomed trails where they travel fairly close behind other snowmobiles. Because of these riding patterns, snowmobilers breathe exhaust emissions from their own vehicle, the vehicle directly in front, as well as those farther up the trail. This can lead to relatively high personal exposure levels of harmful pollutants. A study of snowmobile rider CO exposure conducted at Grand Teton National Park showed that a snowmobiler riding at distances of 25 to 125 feet behind another snowmobiler and traveling at speeds from 10 to 40 mph can be exposed to average CO levels ranging from 0.5 to 23 ppm, depending on speed and distance. The highest CO level measured in this study was 45 ppm, as compared to the current 1-hour NAAQS for CO of 35 ppm.¹¹⁰ While exposure

levels can be less if a snowmobile drives 15 feet off the centerline of the lead snowmobile, the exposure levels are still of concern. This study led to the development of an empirical model for predicting CO exposures from riding behind snowmobiles.

Hydrocarbon speciation for snowmobile emissions was performed for the State of Montana in a 1997 report.¹¹¹ Using the empirical model for CO from the Grand Teton exposure study with benzene emission rates from the State of Montana's emission study, benzene exposures for riders driving behind a single snowmobile were predicted to range from 1.2E+02 to 1.4E+03 µg/m³. Using the same model to predict exposures when riding at the end of a line of six snowmobiles spaced 25 feet apart yielded exposure predictions of 3.5E+03, 1.9E+03,

¹⁰⁸ National Park Service, February 2000. Air Quality Concerns Related to Snowmobile Usage in National Parks. Air Docket A-2000-01, Document No. II-A-44.

¹⁰⁹ G. Bishop, et al., Snowmobile Contributions to Mobile Source Emissions in Yellowstone National

Park, Environmental Science and Technology, Vol. 35, No. 14, at 2873. Docket No. A-2000-01, Document No. II-A-47.

¹¹⁰ Snook and Davis, 1997, "An Investigation of Driver Exposure to Carbon Monoxide While

Traveling Behind Another Snowmobile." Docket No. A-2000-01, Document Number II-A-35.

¹¹¹ Emissions from Snowmobile Engines Using Bio-based Fuels and Lubricants, Southwest Research Institute, August, 1997, at 22. Docket No. A-2000-01, Document Number II-A-50.

1.3E+03, and 1.2E+03 $\mu\text{g}/\text{m}^3$ benzene. at 10, 20, 30, and 40 mph, respectively.

The cancer risk posed to those exposed to benzene emissions from snowmobiles must be viewed within the broader context of expected lifetime benzene exposure. Observed monitoring data and predicted modeled values demonstrate that a significant cancer risk already exists from ambient concentrations of benzene for a large portion of the US population. The Agency's 1996 National-Scale Air Toxics Assessment of personal exposure to ambient concentrations of air toxic compounds emitted by outside sources (e.g. cars and trucks, power plants) found that benzene was among the five air toxics that appear to pose the greatest risk to people nationwide. This national assessment found that for approximately 50% of the US population in 1996, the inhalation cancer risks associated with benzene exceeded 10 in one million. Modeled predictions for ambient benzene from this assessment correlated well with observed monitored concentrations of benzene ambient concentrations.

Specifically, the draft National-Scale Assessment predicted nationwide annual average benzene exposures from outdoor sources to be 1.4 $\mu\text{g}/\text{m}^3$.¹¹² In comparison, snowmobile riders and those directly exposed to snowmobile exhaust emissions had predicted benzene levels two to three orders of magnitude greater than the 1996 national average benzene concentrations.¹¹³ These elevated levels are also known as air toxic "hot spots," which are of particular concern to the Agency. Thus, total annual average exposures to typical ambient benzene concentrations combined with elevated short-term exposures to benzene from snowmobiles may pose a significant risk of adverse public health effects to snowmobile riders and those exposed on a frequent basis to exhaust benzene emissions from snowmobiles. We request comment on this issue.

Since snowmobile riders often travel in large groups, the riders towards the back of the group are exposed to the accumulated exhaust of those riding ahead. These exposure levels can continue for hours at a time. An additional consideration is that the risk to health from CO exposure increases with altitude, especially for unacclimated individuals. Therefore, a

¹¹² National-Scale Air Toxics Assessment for 1996, EPA-453/R-01-003, Draft, January 2001.

¹¹³ Technical Memorandum, Chad Bailey, Predicted benzene exposures and ambient concentrations on and near snowmobile trails, August 17, 2001. Air Docket A-2000-01, Document No. II-B-27.

park visitor who lives at sea level and then rides his or her snowmobile on trails at high-altitude is more susceptible to the effects of CO than local residents.

In addition to snowmobilers themselves, people who are active in proximity to the areas where snowmobilers congregate may also be exposed to high CO levels. An OSHA industrial hygiene survey reported a peak CO exposure of 268 ppm for a Yellowstone employee working at an entrance kiosk where snowmobiles enter the park. This level is greater than the NIOSH peak recommended exposure limit of 200 ppm. OSHA's survey also measured employees' exposures to several air toxics. Benzene exposures in Yellowstone employees ranged from 67-600 $\mu\text{g}/\text{m}^3$, with the same individual experiencing highest CO and benzene exposures. The highest benzene exposure concentrations exceeded the NIOSH Recommended Exposure Limit of 0.1 ppm for 8-hour exposures.¹¹⁴

d. Summary. For all of the reasons described in this section, we continue to believe it is appropriate to set emission standards for snowmobiles. At the national level, these engines contribute to CO levels in several nonattainment areas. Snowmobiles contribute significantly to hydrocarbon emissions that are known to contribute to visibility impairment in Class I areas. In addition, snowmobilers riding in a trail formation, as well as park attendants and other bystanders can experience very high levels of CO and benzene for relatively long periods of time. The proposed standards will help reduce these emissions and help alleviate these concerns.

2. Recreational Marine

As with snowmobiles, the usage patterns of recreational marine engine can lead to high personal exposure levels, particularly for CO emissions. The U.S. Coast Guard reported cases of CO poisoning caused by recreational boat usage.¹¹⁵ These Coast Guard investigations into recreational boating accident reports between 1989 to 1998

¹¹⁴ U.S. Department of Labor, OSHA, Billings Area Office, "Industrial Hygiene Survey of Park Employee Exposures During Winter Use at Yellowstone National Park," February 19 through February 24, 2000. Docket No. A-2000-01, Document Number II-A-37; see also Industrial Hygiene Consultation Report prepared for Yellowstone National Park by Tim Radtke, CIH, Industrial Hygienist, June 1997. Docket A-2000-01, Document No. A-II-41.

¹¹⁵ Summarized in an e-mail from Phil Cappel of the U.S. Coast Guard to Mike Samulski of the U.S. Environmental Protection Agency, October 19, 2000. Docket A-2000-01, Document No. II-A-46.

show that 57 accidents were reported, totaling 87 injuries and 32 fatalities, that involved CO poisoning. An article in the Journal of the American Medical Association also discusses CO poisoning among recreational boat users.¹¹⁶ This study reports 21 incidences of CO poisoning from sterndrive and inboard engines; two-thirds of these incidences occurred when the boat was cruising.

The CO exposure to boaters comes from three general sources. First, CO may enter the engine compartment and cabin spaces from leaks in the exhaust system. Second, boaters may be exposed to CO if they are near the engine when it is idling such as swimming behind the boat. Third, CO may be drawn into the boat when it is cruising due to a back draft of air into the boat known as the "station wagon effect."¹¹⁷

3. Large SI Engines

Exhaust emissions from applications with significant indoor use can expose individual operators or bystanders to dangerous levels of pollution. Forklifts, ice-surfacing machines, sweepers, and carpet cleaning equipment are examples of large industrial spark-ignition engines that often operate indoors or in other confined spaces. Forklifts alone account for over half of the engines in this category. Indoor use may include extensive operation in a temperature-controlled environment where ventilation is kept to a minimum (for example, for storing, processing, and shipping produce).

The principal concern for human exposure relates to CO emissions. One study showed several forklifts operating on liquefied petroleum gas (LPG) with measured CO emissions ranging from 10,000 to 90,000 ppm (1 to 9 percent).¹¹⁸ The threshold limit value for a time-weighted average 8-hour workplace exposure set by the American Conference of Governmental Industrial Hygienists is 25 ppm. The recommended limit adopted by the National Institute for Occupational Safety and Health is 35 ppm for 8-hour exposure and maximum instantaneous exposure of 200 ppm. While these lower numbers refer to ambient concentrations, the very high documented exhaust concentrations

¹¹⁶ Silvers, S., Hampton, N., "Carbon Monoxide Poisoning Among Recreational Boaters." JAM, November 22/29, 1995, Vol 274, No. 20. Docket A-2000-01, Document No. 11-A-45.

¹¹⁷ United States Coast Guard, "Boating Safety Circular 64," December 1986. Docket A-2000-01, Document No. II-A-43.

¹¹⁸ "Warehouse Workers' Headache, Carbon Monoxide Poisoning from Propane-Fueled Forklifts," Thomas A. Fawcett, et al. Journal of Occupational Medicine, January 1992, p.12. Docket A-2000-01, Document No. II-A-36.

would quickly exceed the ambient levels in any operation in enclosed areas without extraordinary ventilation.

Large SI engines operating on any fuel can have very high CO emission levels. While our emission modeling estimates a significantly lower emission rate for engines fueled by LPG relative to gasoline, the study described above shows clearly that individual engines that should have low CO emissions can, through maladjustment or normal degradation, reach dangerous emission levels.

Additional exposure concerns occur at ice rinks. Numerous papers have identified ice-surfacing machines with spark-ignition engines as the source of dangerous levels of CO and NO₂, both for skaters and for spectators.¹¹⁹ This is especially problematic for skaters, who breathe air in the area where pollutant concentration is highest, with higher respiration rates resulting from their high level of physical activity. This problem has received significant attention from the medical community.

In addition to CO emissions, HC emissions from all Large SI engines can lead to increased exposure to harmful pollutants, particularly air toxic emissions. Since many gasoline or dual-fuel engines are in forklifts that operate indoors, reducing evaporative emissions could have additional health benefits to operators and other personnel. Fuel vapors can also cause odor problems.

III. Nonroad: General Concepts

This section describes general concepts concerning the proposed emission standards and the ways in which a manufacturer would show compliance with these standards. Clean Air Act Section 213 requires us to set standards that achieve the greatest degree of emission reduction achievable through the application of technology that will be available, giving appropriate consideration to cost, noise, energy, and safety factors. In addition to emission standards, this document describes a variety of proposed requirements such as applying for certification, labeling engines, and meeting warranty requirements to define a process for implementing the proposed emission-control program in an effective way.

The discussions in this section are general and are meant to cover all the nonroad engines and vehicles that would be subject to the proposed standards. Refer to the discussions of specific engine programs, contained in

Sections IV through VI, for more information about specific requirements for different categories of nonroad engines and vehicles. We request comment on all aspects of these general program provisions.

This section describes general nonroad provisions related to certification prior to sale or introduction into commerce. Section VII describes several proposed compliance provisions that apply generally to nonroad engines, and Section VIII similarly describes general testing provisions.

A. Scope of Application

As noted in Section I.C.1, this proposal covers recreational marine diesel engines, nonroad industrial SI engines rated over 19 kW, and recreational vehicles introduced into commerce in the United States. The following sections describe generally when emission standards apply to these products. Refer to the specific program discussion below for more information about the scope of application and timing of the proposed standards.

1. Do the Standards Apply to All Engines and Vehicles or Only to New Engines and Vehicles?

The scope of this proposal is broadly set by Clean Air Act section 213(a)(3), which instructs us to set emission standards for new nonroad engines and new nonroad vehicles. Generally speaking, the proposed rule is intended to cover all new engines and vehicles in the categories listed above (including any associated equipment or vessels).¹²⁰ Once the emission standards apply to a group of engines or vehicles, manufacturers must get a certificate of conformity from us before selling them in the United States.¹²¹ This includes importation and any other means of introducing engines and vehicles into commerce. We also require equipment manufacturers that install engines from other companies to install only certified engines once emission standards apply. The certificate of conformity (and corresponding engine label) provide assurance that manufacturers have met their obligation to make engines that meet emission standards over the useful life we specify in the regulations.

¹²⁰ For some categories, we are proposing vehicle-based or vessel-based standards. In these cases, the term "engine" in this document applies equally to the vehicles or vessels.

¹²¹ The term "manufacturer" includes any individual or company introducing engines into commerce in the United States.

2. How Do I Know if My Engine or Equipment Is New?

We are proposing to define "new" consistent with previous rulemakings. Under the proposed definition, a nonroad engine (or nonroad equipment) is considered new until its title has been transferred to the ultimate purchaser or the engine has been placed into service. This proposed definition would apply to both engines and equipment, so the nonroad equipment using these engines, including all-terrain vehicles, snowmobiles, off-highway motorcycles, and other land-based nonroad equipment would be considered new until their title has been transferred to an ultimate buyer. In Section III.B.1 we describe how to determine the model year of individual engines and vehicles.

To further clarify the proposed definition of new nonroad engine, we are proposing to specify that a nonroad engine, vehicle, or equipment is placed into service when it is used for its intended purpose. We are therefore proposing that an engine subject to the proposed standards is used for its functional purpose when it is installed on an all-terrain vehicle, snowmobile, off-highway motorcycle, marine vessel, or other piece of nonroad equipment. We need to make this clarification because some engines are made by modifying a highway or land-based nonroad engine that has already been installed on a vehicle or other piece of equipment. For example, someone can install an engine in a recreational marine vessel after it has been used for its functional purpose as a land-based highway or nonroad engine. We believe this is a reasonable approach because the practice of adapting used highway or land-based nonroad engines may become more common if these engines are not subject to the standards in this proposal.

In summary, an engine would be subject to the proposed standards if it is:

- Freshly manufactured, whether domestic or imported; this may include engines produced from engine block cores
- Installed for the first time in nonroad equipment after having powered a car or a category of nonroad equipment subject to different emission standards
- Installed in new nonroad equipment, regardless of the age of the engine
- Imported (new or used)

3. When Do Imported Engines Need To Meet Emission Standards?

The proposed emission standards would apply to all new engines that are used in the United States. According to

¹¹⁹ "Summary of Medical Papers Related to Exhaust Emission Exposure at Ice Rinks," EPA Memorandum from Alan Stout to Docket A-2000-01. Docket A-2000-01. Document No. II-A-38.

Clean Air Act section 216, "new" includes engines that are imported by any person, whether freshly manufactured or used. Thus, the proposed program would include engines that are imported for use in the United States, whether they are imported as loose engines or if they are already installed on a marine vessel, recreational vehicle, or other piece of nonroad equipment, built elsewhere. All imported engines would need an EPA-issued certificate of conformity to clear customs, with limited exemptions (as described below).

If an engine or marine vessel, recreational vehicle, or other piece of nonroad equipment that was built after emission standards take effect is imported without a currently valid certificate of conformity, we would still consider it to be a new engine, vehicle, or vessel. This means it would need to comply with the applicable emission standards. Thus, for example, a marine vessel manufactured in a foreign country in 2007, then imported into the United States in 2010, would be considered "new." The engines on that piece of equipment would have to comply with the requirements for the 2007 model year, assuming no other exemptions apply. This provision is important to prevent manufacturers from avoiding emission standards by building vessels abroad, transferring their title, and then importing them as used vessels.

With regard to recreational vehicles, the United States Customs Service currently allows foreign nationals traveling with their personal automobiles, trailers, aircraft, motorcycles, or boats to import such vehicles without having to pay a tariff, so long as they are used in the United States only for the transportation of such person.¹²² We propose to use this approach in our regulation of emissions from recreational vehicles (snowmobiles, off-highway motorcycles, and all-terrain vehicles). We propose to allow noncompliant recreational vehicles that are the personal property of foreign nationals to be imported into the United States as long as the foreign national bringing them into the country intends to use them only for his or her recreational purposes and they are not left here when the person leaves the country (they are either taken back or destroyed). In other words, such recreational vehicles would not be considered "new" for the purpose of

determining whether they must comply with the proposed emission limits. We propose that a time limit of one year on this exemption so that recreational vehicles imported for more than that period of time would be considered imported, and therefore "new" and subject to the proposed emission limits. We are also proposing that this time period cannot be extended. This time limit is designed to prevent a person from using the exemption to effectively circumvent the standards.

This exemption generally would not apply to any commercial engines that would be subject to emission standards. To import noncomplying engines for commercial applications, the importer would have to meet the requirements for a different exemption, as described in Section VII.

4. Do the Standards Apply to Exported Engines or Vehicles?

Engines or vehicles intended for export would generally not be subject to the requirements of the proposed emission-control program. However, engines that are exported and subsequently re-imported into the United States would need to be certified. For example, this would be the case when a foreign company purchases engines manufactured in the United States for installation on a marine vessel, recreational vehicle, or other nonroad equipment for export back to the United States. Those engines would be subject to the emission standards that apply on the date the engine was originally manufactured. If the engine is later modified and certified (or recertified), the engine is subject to emission standards that apply on the date of the modification. So, for example, foreign boat builders buying U.S.-made engines without recertifying the engines will need to make sure they purchase complying engines for the products they sell in the U.S.

5. Are There Any New Engines or Vehicles That Would Not Be Covered?

We are proposing to extend our basic nonroad exemptions to the engines and vehicles covered by this proposal. These include the testing exemption, the manufacturer-owned exemption, the display exemption, and the national security exemption. These exemptions are described in more detail in Section VII.C.

In addition, the Clean Air Act does not consider stationary engines or engines used solely for competition to be nonroad engines, so the proposed emission standards do not apply to them. Refer to the program discussions below for a discussion of how these

exclusions apply for different categories of engines.

B. Emission Standards and Testing

1. How Does EPA Determine the Emission Standards?

Our general goal in designing the proposed standards is to develop a program that will achieve significant emission reductions. We are guided by Clean Air Act section 213(a)(3), which instructs us to "achieve the greatest degree of emission reduction achievable through the application of technology the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology." The Act also instructs us to first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 202, taking into consideration technological feasibility, costs, and other factors.

Engines subject to the proposed exhaust emission standards would have to meet the standards based on measured emissions of specified pollutants such as NO_x, HC, or CO, though not all engines will have standards for each pollutant. Diesel engines generally must also meet a PM emission standard. In addition, there may be requirements for crankcase or evaporative emissions, as described below.

The proposed emission standards would be effective on a model-year basis. We are proposing to define model year much like we do for passenger cars. It would generally mean either the calendar year or some other annual production period based on the manufacturer's production practices. For example, manufacturers could start selling 2006 model year engines as early as January 2, 2005, as long as the production period extends until at least January 1, 2006. All of a manufacturer's engines from a given model year would have to meet emission standards for that model year. For example, manufacturers producing new engines in the 2006 model year would need to comply with the 2006 standards. Refer to the individual program discussions below or the regulations for additional information about model year periods, including how to define what model year means in less common scenarios, such as installing used engines in new equipment.

¹²² Harmonized Tariff Schedule of the United States (2001) (Rev. 1), subheading 9804.00.35. A copy of this document is included in Air Docket A-2000-01, at Document No. II-A-82.

2. What Standards Would Apply to Crankcase and Evaporative Emissions?

Due to blow-by of combustion gases and the reciprocating action of the piston, exhaust emissions can accumulate in the crankcase of four-stroke engines. Uncontrolled engine designs route these vapors directly to the atmosphere, where they contribute to ambient levels of these pollutants. We have long required that automotive engines prevent emissions from their crankcases. Manufacturers generally do this by routing crankcase vapors through a valve into the engine's air intake system. We are proposing to require that engines prevent crankcase emissions. We request comment on this proposed requirement for individual types of engines, as described in those sections below.

For industrial spark-ignition engines, we are proposing standards to limit evaporative emissions. Evaporative emissions result from heating gasoline (or other volatile fuels) in a tank that is vented to the atmosphere. See Section IV for additional information.

3. What Duty Cycles Is EPA Proposing for Emission Testing?

Testing an engine for exhaust emissions typically consists of exercising it over a prescribed duty cycle of speeds and loads, typically using an engine or chassis dynamometer. The duty cycle used to measure emissions for certification, which simulates operation in the field, is critical in evaluating the likely emissions performance of engines designed to emission standards.

Steady-state testing consists of engine operation for an extended period at several speed-load combinations. Associated with these test points are weighting factors that allow calculation of a single weighted-average steady-state emission level in g/kW. Transient testing involves a continuous trace of specified engine or vehicle operation; emissions are collected over the whole testing period for a single mass measurement.

See Section VIII.C for a discussion of how we define maximum test speed and intermediate speed for engine testing. Refer to the program discussions below for more information about the type of duty cycle required for testing the various engines and vehicles.

4. How Do Adjustable Engine Parameters Affect Emission Testing?

Many engines are designed with components that can be adjusted for optimum performance under changing conditions, such as varying fuel quality,

high altitude, or engine wear. Examples of adjustable parameters include spark timing, idle speed setting, and fuel injection timing. While we recognize the need for this practice, we are also concerned that engines maintain a consistent level of emission control for the whole range of adjustability. We are therefore proposing to require manufacturers to show that their engines meet emission standards over the full adjustment range.

Manufacturers would also have to provide a physical stop to prevent adjustment outside the established range. Operators would then be prohibited by the anti-tampering provisions from adjusting engines outside this range. Refer to the proposed regulatory text for more information about adjustable engine parameters. See especially the proposed sections 40 CFR 1048.115 for industrial SI engines and 40 CFR 1051.115 for recreational vehicles.

5. What Are Voluntary Low-Emission Engines and Blue Sky Standards?

Several state and environmental groups and manufacturers of emission controls have supported our efforts to develop incentive programs to encourage the use of engine technologies that go beyond federal emission standards. Some companies have already significantly developed these technologies. In the final rule for land-based nonroad diesel engines, we included a program of voluntary standards for low-emitting engines, referring to these as "Blue Sky Series" engines (63 FR 56967, October 23, 1998). We included similar programs in several of our other nonroad rules, including commercial marine diesel. The general purposes of such programs are to provide incentives to manufacturers to produce clean products as well as create market choices and opportunities for environmental information for consumers regarding such products. The voluntary aspects of these programs, which in part provides an incentive for manufacturers willing to certify their products to more stringent standards than necessary, is an important part of the overall application of "Blue Sky Series" programs.

We are proposing voluntary Blue Sky Series standards for many of the engines subject to this proposal. Creating a program of voluntary standards for low-emitting engines, including testing and durability provisions to help ensure adequate in-use performance, will be a step forward in advancing emission-control technologies. While these are voluntary standards, they become

binding once a manufacturer chooses to participate. EPA certification will therefore provide protection against false claims of environmentally beneficial products. For the program to be most effective, however, incentives should be in place to motivate the production and sale of these engines. We solicit ideas that could encourage the creation of these incentive programs by users and state and local governments. We also request comment on additional measures we could take to encourage development and introduction of these engines. Finally, we request comment on the Blue Sky Series approach in general as it would apply to the engines covered by this proposed rule.

C. Demonstrating Compliance

We are proposing a compliance program to accompany emission standards. This consists first of a process for certifying engine models. In addition to certification testing, we are proposing several provisions to ensure that emission-control systems continue to function over long-term operation in the field. Most of these certification and durability provisions are consistent with previous rulemakings for other nonroad engines. Refer to the discussion of the specific programs below for additional information about these requirements for each engine category.

1. How Would I Certify My Engines?

We are proposing a certification process similar to that already adopted for other engines. Manufacturers generally test representative prototype engines and submit the emission data along with other information to EPA in an application for a Certificate of Conformity. If we approve the application, then the manufacturer's Certificate of Conformity allows the manufacturer to produce and sell the engines described in the application in the U.S.

We are proposing that manufacturers certify their engine models by grouping them into engine families. Under this approach, engines expected to have similar emission characteristics would be classified in the same engine family. The engine family definition is fundamental to the certification process and to a large degree determines the amount of testing required for certification. The proposed regulations include specific engine characteristics for grouping engine families for each category of engines. To address a manufacturer's unique product mix, we may approve using broader or narrower engine families.

Engine manufacturers are generally responsible to build engines that meet the emission standards over each engine's useful life. The useful life we adopt by regulation is intended to reflect the period during which engines are designed to properly function without being remanufactured. Useful life values, which are expressed in terms of years or amount of operation (in hours or kilometers), vary by engine category, as described in the following sections. Consistent with other recent EPA programs, we would generally consider this useful life value in amount of operation to be a minimum value and would require manufacturers to comply for a longer period in those cases where they design their engines to operate longer than the minimum useful life. As proposed, manufacturers would be required to estimate the rate of deterioration for each engine family over its useful life. Manufacturers would show that each engine family meets the emission standards after incorporating the estimated deterioration in emission control.

The emission-data engine is the engine from an engine family that will be used for certification testing. To ensure that all engines in the family meet the standards, we are proposing that manufacturers select the engine most likely to exceed emission standards in a family for certification testing. In selecting this "worst-case" engine, the manufacturer uses good engineering judgment. Manufacturers would consider, for example, all engine configurations and power ratings within the engine family and the range of installed options allowed). Requiring the worst-case engine to be tested ensures that all engines within the engine family are complying with emission standards.

We are proposing to require manufacturers to include in their application for certification the results of all emission tests from their emission-data engines, including any diagnostic-type measurements (such as ppm testing) and invalidated tests. This complete set of test data ensures that the valid tests that form the basis of the manufacturer's application are a robust indicator of emission-control performance, rather than a spurious or incidental test result. We request comment on these data-reporting requirements.

Clean Air Act section 206(h) specifies that test procedures for certifying engines (including the test fuel) should adequately represent in-use operation. We are proposing test fuel specifications intended to represent in-use fuels. Engines would have to meet the

standards on fuels with properties anywhere in the range of proposed test fuel specifications. The test fuel is generally to be used for all testing associated with the regulations proposed in this document, including certification, production-line testing, and in-use testing. Refer to the program discussions below for a discussion of the test fuel proposed for different categories of engines.

We are proposing to require engine manufacturers to give engine buyers instructions for properly maintaining their engines. We are including limitations on the frequency of scheduled maintenance that a manufacturer may specify for emission-related components to help ensure that emission-control systems don't depend on an unreasonable expectation of maintenance in the field. These maintenance limits would also apply during any service accumulation that a manufacturer may do to establish deterioration factors. This approach is common to all our engine programs. It is important to note, however, that these provisions would not limit the maintenance an operator could perform. It would merely limit the maintenance that operators would be expected to perform on a regularly scheduled basis. Refer to the discussion of the specific programs below for additional information about the allowable maintenance intervals for each category of engines.

Once an engine family is certified, we would require every engine a manufacturer produces from the engine family to have an engine label with basic identifying information. We request comment on the proposed requirements for the design and content of engine labels, which are detailed in § 1048.135 and § 1051.135 of the proposed regulation text.

2. What Warranty Requirements Apply to Certified Engines?

Consistent with our current emission-control programs, we are proposing that manufacturers provide a design and defect warranty covering emission-related components. As required by the Clean Air Act, the proposed regulations would require that the warranty period must be longer than the minimum period we specify if the manufacturer offers a longer mechanical warranty for the engine or any of its components; this includes extended warranties that are available for an extra price. See the proposed regulation language for a description of which components are emission-related.

If an operator makes a valid warranty claim for an emission-related

component during the warranty period, the engine manufacturer is generally obligated to replace the component at no charge to the operator. The engine manufacturer may deny warranty claims if the operator failed to do prescribed maintenance that contributed to the warranty claim.

We are also proposing a defect reporting requirement that applies separate from the emission-related warranty (see Section VII.F). In general, defect reporting applies when a manufacturer discovers a pattern of component failures, whether that information comes from warranty claims, voluntary investigation of product quality, or other sources.

3. Can I Meet Standards With Emission Credits?

Many of our emission-control programs have a voluntary emission-credit program to facilitate implementation of emission controls. An emission-credit program is an important factor we take into consideration in setting emission standards that are appropriate under Clean Air Act section 213. An emission-credit program can reduce the cost and improve the technological feasibility of achieving standards, helping to ensure the attainment of the standards earlier than would otherwise be possible. Manufacturers gain flexibility in product planning and the opportunity for a more cost-effective introduction of product lines meeting a new standard. Emission-credit programs also create an incentive for the early introduction of new technology, which allows certain engine families to act as trailblazers for new technology. This can help provide valuable information to manufacturers on the technology before they apply the technology throughout their product line. This early introduction of clean technology improves the feasibility of achieving the standards and can provide valuable information for use in other regulatory programs that may benefit from similar technologies.

Emission-credit programs may involve averaging, banking, or trading. Averaging would allow a manufacturer to certify one or more engine families at emission levels above the applicable emission standards, as long as the increased emissions are offset by one or more engine families certified below the applicable standards. The over-complying engines generate credits that are used by the under-complying engines. Compliance is determined on a total mass emissions basis to account for differences in production volume, power and useful life among engine families. The average of all emissions

for a particular manufacturer's production must be at or below that level of the applicable emission standards. This calculation generally factors in sales-weighted average power, production volume, useful life, and load factor. Banking and trading would allow a manufacturer to generate emission credits and bank them for future use in its own averaging program in later years or sell them to another company.

In general, a manufacturer choosing to participate in an emission-credit program would certify each participating engine family to a Family Emission Limit. In its certification application, a manufacturer would determine a separate Family Emission Limit for each pollutant included in the emission-credit program. The Family Emission Limit selected by the manufacturer becomes the emission standard for that engine family. Emission credits are based on the difference between the emission standard that applies and the Family Emission Limit. We would expect the manufacturer to meet the Family Emission Limit for all emission testing. At the end of the model year, manufacturers would generally need to show that the net effect of all their engine families participating in the emission-credit program is a zero balance or a net positive balance of credits. A manufacturer could generally choose to include only a single pollutant from an engine family in the emission-credit program or, alternatively, to establish a Family Emission Limit for each of the regulated pollutants.

An alternative approach to requiring manufacturers to choose Family Emission Limits would be for us to create a discrete number of emission levels or "bins" above and below the proposed standard that manufacturers could certify to. These bin levels would then replace the Family Emission Levels in the credit calculations. We request comment on whether we should consider this approach for the engines covered by this proposal. The advantage of bins are that they can be defined by step changes in technology, which gives more assurance of emission reduction than Family Emission Limits which can change slightly with only marginal changes to the engine.

Refer to the program discussions below for more information about emission-credit provisions for individual engine categories. We request comment on all aspects of the emission-credit programs discussed in this proposal. In particular, we request comment on the structure of the proposed emission-credit programs and

how the various provisions may affect manufacturers' ability to utilize averaging, banking, or trading to achieve the desired emission-reductions in the most efficient and economical way.

4. What Are the Proposed Production-Line Testing Requirements?

We are proposing production-line testing for recreational marine diesel engines, recreational vehicles, and Large SI engines. According to these requirements, manufacturers would routinely test production-line engines to help ensure that newly assembled engines control emissions at least as well as the emission-data engines tested for certification. Production-line testing serves as a quality-control step, providing information to allow early detection of any problems with the design or assembly of freshly manufactured engines. This is different than selective enforcement auditing, in which we would give a test order for more rigorous testing for production-line engines in a particular engine family (see Section VII.E). Production-line testing requirements are already common to several categories of engines as part of their emission-control program.

A manufacturer's liability under the production-line testing program is limited to the test engine and any future production. If an engine fails to meet an emission standard, the manufacturer must modify it to bring that specific engine into compliance. If too many engines exceed emission standards, the engine family is determined to be in noncompliance and the manufacturer will need to correct the problem for future production. This correction may involve changes to assembly procedures or engine design, but the manufacturer must, in any case, do sufficient testing to show that the engine family complies with emission standards.

The proposed production-line testing programs would depend on the Cumulative Sum (CumSum) statistical process for determining the number of engines a manufacturer needs to test (see the proposed regulations for the specific calculation methodology). Each manufacturer selects engines randomly at the beginning of a new sampling period. If engines must be tested at a facility where final assembly is not yet completed, manufacturers must randomly select engine components and assemble the test engine according to their established assembly instructions. A sampling period may be a quarter or a calendar year, depending generally on the size of the engine family. The Cumulative Sum program uses the emission results to calculate the number

of tests required for the remainder of the sampling period to reach a pass or fail determination. If tested engines have relatively high emissions, the statistical sampling method calls for an increased number of tests to show that the engine family meets emission standards. The remaining number of tests is recalculated after the manufacturer tests each engine. Engines selected should cover the broadest range of production configurations possible. Tests should also be distributed evenly throughout the sampling period to the extent possible.

Under the Cumulative Sum approach, individual engines can exceed the emission standards without bringing the whole engine family into noncompliance. Note, however, that we propose to require manufacturers to adjust or repair every failing engine and retest it to show that it meets the emission standards. Note also that all production-line emission measurements must be included in the periodic reports to us. This includes any type of screening or surveillance tests (including ppm measurements), all data points for evaluating whether an engine controls emissions "off-cycle," and any engine tests that exceed the minimum required level of testing.

We are proposing to further reduce the testing requirements for engine families that consistently meet emission standards. For engine families with no production-line tests exceeding emission standards for two consecutive years, the manufacturer may request a reduced testing rate. The minimum testing rate is one test per engine family for one year. Our approval for a reduced testing rate would apply only for a single model year.

As we have concluded in other engine programs, some manufacturers may have unique circumstances that call for different methods to show that production engines comply with emission standards. We therefore propose to allow a manufacturer to suggest an alternate plan for testing production-line engines, as long as the alternate program is as effective at ensuring that the engines will comply. A manufacturer's petition to use an alternate plan should address the need for the alternative and should justify any changes from the regular testing program. The petition must also describe in detail the equivalent thresholds and failure rates for the alternate plan. If we approved the plan, we would use these criteria to determine when an engine family would become noncompliant. It is important to note that this allowance is intended only as a flexibility, and is not intended

to affect the stringency of the standards or the production-line testing program.

Refer to the specific program discussions below for additional information about production-line testing for different types of engines.

D. Other Concepts

1. What Are the Proposed Emission-Related Installation Instructions?

For manufacturers selling loose engines to equipment manufacturers, we are proposing to require the engine manufacturer to develop a set of emission-related installation instructions. This would include anything that the installer would need to know to ensure that the engine operates within its certified design configuration. For example, the installation instructions could specify a total capacity needed from the engine cooling system, placement of catalysis after final assembly, or specification of parts needed to control evaporative emissions. We would approve the installation instructions as part of the certification process. If equipment manufacturers fail to follow the established emission-related installation instructions, we would consider this tampering, which could subject them to significant civil penalties. Refer to the program discussions below for more information about specific provisions related to installation instructions.

2. What Is Consumer-Choice Labeling?

California ARB has recently proposed consumer/environmental label requirements for outboard and personal-watercraft engines. Under this concept, manufacturers would label their engines or vehicles based on their certified emission level. California has proposed three different labels to differentiate varying degrees of emission control—one for meeting the EPA 2006 standard, one for being 20 percent lower, and one for being 65 percent below. More detail on this concept is provided in the docket.¹²³

We are considering a similar approach to labeling the engines subject to this proposal. This would apply especially to consumer products. Consumer-choice labeling would give people the opportunity to consider varying emission levels as a factor in choosing specific models. This may also give the manufacturer an incentive to produce more of their cleaner engine models. A difficulty in designing a labeling program is in creating a scheme that

communicates information clearly and simply to consumers. Given the very different emission levels expected from the various engines, it would be difficult to create a consistent set of labels for different engines. Also, we are concerned that other organizations could use the labeling provisions to mandate certain levels of emission control, rather than relying on consumer choice as a market-based incentive. We request comment on this approach for recreational marine engines and vessels and for recreational vehicles.

An alternative to the promotional-type label adopted by California ARB would be an approach that simply identifies an engine's certified emission levels on the emission-control label. This "informational label" could be used with or without defining voluntary emission standards. This would not provide a standardized way for manufacturers to promote their cleanest products, but it would give interested consumers the ability to make informed choices based on a vehicle's certified emission levels. We are proposing this approach of requiring an engine's certified emission levels to be on the emission-control label for engines and vehicles certified to voluntary low emission or Blue Sky standards. We request comment on this approach and whether we should extend this requirement to all vehicles and engines, not just those complying with voluntary low emission standards. Also, we request comment on the relative advantages of the different approaches to consumer-choice labeling just discussed.

3. Are There Special Provisions for Small Manufacturers of These Engines and Vehicles?

The Regulatory Flexibility Act, 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Act of 1996 (SBREFA), Public Law 104–121, to ensure that concerns regarding small entities are adequately considered during the development of new regulations that affect them. The scope of this proposal includes many engine and vehicle manufacturers that have not been subject to our regulations or certification process. Many of these manufacturers are small businesses for which a typical regulatory program may be very burdensome. The sections describing the proposed emission-control program include discussion of proposed special compliance provisions designed to address this for the different engine categories. Section XI.B gives an overview of the inter-agency process in which we developed these small-volume provisions.

IV. Large SI Engines

A. Overview

This section applies to most nonroad spark-ignition engines rated over 19 kW ("Large SI engines"). The companies producing Large SI engines are typically subsidiaries of automotive companies. In most cases, these companies modify car and truck engines for industrial applications. However, the Large SI industry has historically taken a much less centralized approach to designing and producing engines. Engine manufacturers often sell dressed engine blocks without manifolds or fuel systems. Fuel system suppliers have played a big role in designing and calibrating nonroad engines, sometimes participating directly in engine assembly. Several equipment manufacturers, mostly forklift producers, also play the role of an engine manufacturer by calibrating engine models and completing engine assembly.

The proposed emission standards would achieve emission reductions of about 90 percent for CO, 85 percent for NO_x, and 70 percent for HC. Since the emission standards are based on engine testing with broadly representative duty cycles, these estimated reductions apply to all types of equipment using these engines. Reducing Large SI engine emissions will be especially valuable to individuals operating these engines in enclosed areas.

The cost of applying the anticipated emission-control technology to these engines is offset by much greater cost savings from reduced fuel consumption over the engines' operating lifetime. The large estimated fuel and maintenance savings relative to the estimated incremental cost of producing low-emitting engines raise the question of why normal market forces have failed to induce manufacturers to design and sell engines with emission-control technologies on the basis of the expected performance improvements. As described in Chapter 5 of the Draft Regulatory Support Document, we believe this is largely accounted for by the difficulty of equipment purchasers to justify increased capital spending on industrial machines, even with the potential for net savings over the lifetime of the equipment. This in turn prevents manufacturers from developing or implementing technologies in light of the uncertain demand. We request comment on the market dynamics that would prevent the development of and demand for cost-saving technologies.

This section describes the proposed requirements that would apply to engine manufacturers. See Section III for

¹²³ "Public Hearing to Consider Amendments to the Spark-Ignition Marine Engine Regulations," Mail Out #MSC 99–15, June 22, 1999 (Docket A–2000–01, Document II–A–27).

a description of our general approach to regulating nonroad engines and how manufacturers show that they meet emission standards. See Section VII for additional proposed requirements for engine manufacturers, equipment manufacturers, and others.

B. Large SI Engines Covered by This Proposal

Large SI engines covered in this section power nonroad equipment such as forklifts, sweepers, pumps, and generators. This would include marine auxiliary engines, but does not include marine propulsion engines or engines used in recreational vehicles (snowmobiles, off-highway motorcycles, and all-terrain vehicles). These other nonroad applications are addressed elsewhere in this document.

Even though some aircraft use engines similar to the Large SI engines described in this proposal, we are not proposing emission standards for aircraft. Aircraft are covered under a separate part of the Clean Air Act. EPA's current aircraft regulations define aircraft as needing airworthiness certification from the Federal Aviation Administration. However, neither ultra-light airplanes nor blimps are governed by emission standards under our aircraft regulations. Ultra-light airplanes are exempt from the airworthiness certification requirements in 14 CFR part 91. In contrast, blimps are subject to airworthiness certification, but EPA's emission standards for aircraft do not apply to them. Blimps are very likely to be able to use conventional land-based engines for propulsion and navigation. Our proposed definition of aircraft in these regulations would exclude all aircraft from emission standards, including aircraft that do not receive an airworthiness certificate from FAA. We may address this issue in a separate Federal Register notice.

This proposal applies only to spark-ignition engines. Our most recent rulemaking for nonroad diesel engines finalized a definition of "compression-ignition" that was intended to address the status of alternative-fuel engines (63 FR 56968, October 23, 1998). We are proposing to adopt updated definitions consistent with those already established in previous rulemakings to clarify that all reciprocating internal combustion engines are either spark-ignition or compression-ignition. We request comment on whether we should revise the definitions that differentiate between these types of engines.

Several types of engines are excluded or exempted from the proposed requirements. The following sections describe the types of special provisions

that apply uniquely to nonrecreational spark-ignition engines rated over 19 kW. Section VII.C covers several additional exemptions that apply generally across programs.

1. Stationary Engine Exclusion

Consistent with the Clean Air Act, we do not treat stationary engines as nonroad engines, so the proposed emission standards would not apply to engines used in stationary applications. In general, an engine is considered stationary if it will be either installed in a fixed position or if it will be a portable (or transportable) engine operating in a single location for at least one year. We are proposing a requirement that these stationary engines have an engine label identifying their excluded status. This would be especially valuable for importing excluded engines without complication from U.S. Customs officials. It would also help us ensure that such engines are legitimately excluded from the emission standards proposed in this document.

2. Exclusion for Engines Used Solely for Competition

The Clean Air Act also does not consider engines used solely for competition to be nonroad engines. We would normally include this exclusion directly in the regulations. For Large SI engines, however, it seems unlikely that there would be any need for an explicit treatment of competition engines in the regulations. Any applications involving competition with spark-ignition engines would likely fall under the proposed program for recreational vehicles, which has an extensive treatment of competition engines. We request comment on the need for more detailed consideration of Large SI engines that may be used solely for competition.

3. Motor Vehicle Engine Exemption

In some cases an engine manufacturer may want to modify a certified automotive engine for nonroad use to sell the engine without recertifying it as a Large SI engine. We propose to allow for this, as long as the manufacturer makes no changes to the engine that could affect its exhaust or evaporative emissions. We propose to require annual reporting for companies that use this exemption, including a list of engine models from each company. Manufacturers must generally meet all the requirements from 40 CFR part 86 that would apply if the engine were used in a motor vehicle. Section 1048.605 of the proposed regulations describes the qualifying criteria and responsibilities in greater detail.

In addition, a vehicle manufacturer may want to produce vehicles certified to highway emission standards for nonroad use. We propose to allow this, as long as there is no change in the vehicle's exhaust or evaporative emission-control systems.

4. Lawn and Garden Engine Exemption

Most Large SI engines have a total displacement greater than one liter. The design and application of the few Large SI engines currently being produced with displacement less than one liter are very similar to those of engines rated below 19 kW, which are typically used for lawn and garden applications. As described in the most recent rulemaking for these smaller engines, we propose that manufacturers may certify engines between 19 and 30 kW with total displacement of one liter or less to the requirements we have already adopted in 40 CFR part 90 for engines below 19 kW (see 65 FR 24268, April 25, 2000). These engines would then be exempt from the requirements proposed in this document. This approach would allow manufacturers of small air-cooled engines to certify their engines rated between 19 and 30 kW with the program adopted for the comparable engines with slightly lower power ratings. This would also be consistent with the provisions adopted by California ARB.

We are proposing the 30-kW cap to address our concern that treating all engines under one liter as Small SI engines may be inadequate. For example, lawn and garden engines generally don't use turbochargers or other technologies to achieve very high power levels. However, it may be possible for someone to design an engine under one liter with unusually high power, which would more appropriately be grouped with other Large SI engines with similar power capability rather than with Small SI engines. Motorcycles, for example, may produce 120 kW from a 750 cc (0.75 liter) engine. The 30-kW maximum power rating to qualify for treatment as Small SI engines represents a reasonable maximum power output that is possible from SI engines under one liter with technologies typical of lawn and garden engines. We request comment on the suggested power threshold and on any other approaches to addressing the issue of which standards should apply to engines in this intermediate size and power range.

We are proposing a temporary expansion of the lawn and garden exemption for small-volume manufacturers, as described in Section IV.E.

Technological, economic and environmental issues associated with the few engine models with rated power over 19 kW, but with displacement at or below 1 liter were previously analyzed in the rulemaking for Small Nonroad SI engines. This proposal therefore does not specifically address the provisions applying to them or repeat the estimated impacts of adopting emission standards.

Conversely, we are aware that some engines rated below 19 kW may be part of a larger family of engine models that includes engines rated above 19 kW. This may include, for example, three- and four-cylinder engine models that are otherwise identical. To avoid the need to separate these engines into separate engine families (certified under completely different control programs), we propose to allow any engine rated under 19 kW to certify to the more stringent Large SI emission standards. Such an engine would then be exempt from the requirements of 40 CFR part 90. Since manufacturers exercising this option would be voluntarily meeting a more stringent emission standard, this does not affect our earlier conclusions about the appropriate standards for engines rated under 19 kW.

We may also consider applying the Large SI emission standards to these smaller engines on a mandatory basis when engines above and below 19 kW share fundamental design features. We request comment on the need for, and appropriateness of, such an approach.

5. Special Provisions for Non-Integrated Engine Manufacturers

We are aware that several Large SI engine manufacturers rely on other companies to supply engine blocks or partially assembled engines that are then modified for the final application. A similar situation occurs for some marine diesel engine manufacturers. To address this for the marine engines, we defined these companies as post-manufacture marinizers and created a variety of provisions to address their particular concerns (64 FR 73300; December 29, 1999).

The most important concern for these companies is the possibility that the company supplying the base engines may discontinue production with minimal notice. Once emission standards are in place, this would leave the manufacturer with a need to quickly design and certify a different engine to meet emission standards. One company has reported that two or three months are required to apply closed-loop catalyst systems to a new engine. With some additional time to complete the certification, a manufacturer in this situation would face a possible

shutdown in engine assembly until the new engine is ready for production. For marine engines, we allow post-manufacture marinizers in this situation to request permission to produce uncertified engines for up to one year. The post-manufacture marinizer must show that it is not at fault and that it would face serious economic hardship without the exemption. We request comment on the need for such a provision for Large SI engines and on how to limit such a provision to companies that rely on partially assembled engines from unrelated companies. If we adopt provisions to address this concern, they would likely be similar to those adopted for marine diesel engines (see 40 CFR 94.209(b)). We also request comment on the potential for the proposed hardship provisions to address this concern (see Section VII.C and the proposed regulatory language in 40 CFR part 1068, subpart C).

C. Proposed Standards

In October 1998, California ARB adopted emission standards for Large SI engines. We are proposing to extend requirements for these engines to the rest of the U.S. in the near term. We are also proposing to revise the emission standards and add various provisions in the long term, as described below. The near-term and the long-term emission standards are based on the use of three-way catalytic converters with electronic fueling systems to control emissions, and would differ primarily in terms of how well the controls are optimized. In addition to the anticipated emission reductions, we project that these technologies would provide large savings to operators as a result of reduced fuel consumption and other performance improvements.

An important element of the proposed control program is the attempted harmonization with the requirements adopted by California ARB. We are aware that inconsistent or conflicting requirements could lead to additional costs. Cooperation between agencies has allowed a great degree of harmonization, as reflected in this proposed rule. In addition to the common structure of the programs, the specific provisions that make up the certification requirements and compliance programs are consistent with very few exceptions. In most of the cases where individual provisions differ, the EPA language is more general than that adopted by California, rather than being incompatible. The following sections describe the proposed requirements in greater detail.

1. What Are the Proposed Standards and Compliance Dates?

We propose to adopt standards starting in the 2004 model year consistent with those adopted by California ARB. These standards, which apply to testing only with the applicable steady-state duty cycles, are 4 g/kW-hr (3 g/hp-hr) for HC+NO_x emissions and 50 g/kW-hr (37 g/hp-hr) for CO emissions. See Section IV.D for further discussion of the steady-state duty cycles. We expect manufacturers to meet these standards using three-way catalytic converters and electronically controlled fuel systems. These systems would be similar to those used for many years in highway applications, but not necessarily with the same degree of sophistication.

Proposing emission standards for these engines starting in 2004 allows less than the usual lead time for meeting EPA requirements. We believe, however, that manufacturers will be able to achieve this by expanding their production of the same engines they will be selling in California at that time. We have designed our 2004 standards to require no additional development, design, or testing beyond what California ARB already requires. We request comment on manufacturers' ability to produce EPA-compliant engines nationwide in 2004. Any comments should address whether there are issues related to production capacity as opposed to additional design or testing needs. As proposed, the emission standards would allow us to set near-term requirements to introduce the low-emission technologies for substantial emission reductions with minimal lead time. We request comment on adopting these standards for 2004 model year engines.

Testing has shown that additional time to optimize designs to better control emissions will allow manufacturers to meet significantly more stringent emission standards that are based on more robust measurement procedures. Starting with the 2007 model year, we propose to apply emission standards of 3.4 g/kW-hr (2.5 g/hp-hr) for HC+NO_x emissions and 3.4 g/kW-hr (2.5 g/hp-hr) for CO emissions. These standards would apply to emission measurements during duty-cycle testing under both steady-state and transient operation.¹²⁴ As described in Chapter 4 of the Draft Regulatory Support Document, we believe manufacturers can achieve these proposed emission standards by optimizing currently available three-

¹²⁴ See Section IV.D for a discussion of duty cycles.

way catalysts and electronically controlled fuel systems. As described in Section IV.D.5, we propose to apply field-testing standards of 4.7 g/kW-hr (3.5 g/hp-hr) for HC+NO_x emissions and 5.0 g/kW-hr (3.8 g/hp-hr) for CO emissions for 2007 and later model year engines.

The proposed 2007 standards described above reflect the importance of adopting standards that protect human health when regulating engines that often operate in enclosed areas, but also include numerous applications that operate predominantly outdoors. Emission-control technologies for Large SI engines generally pose a tradeoff between controlling NO_x and CO emissions. Chapter 4 of the Regulatory Support Document presents multiple scenarios of emission standards with a comparison of calculated ambient NO, NO₂, and CO levels. We request comment on a combination of emission standards that would shift to increase or decrease the emphasis on controlling CO emissions. To increase the relative control of CO emissions, we would consider emission standards of 4.0 g/kW-hr (3.0 g/hp-hr) HC+NO_x and 2.5 g/kW-hr (1.9 g/hp-hr). To focus more on reducing HC+NO_x emissions, we would consider emission standards of 2.6 g/kW-hr (2.0 g/hp-hr) HC+NO_x and 4.4 g/kW-hr (3.3 g/hp-hr) CO. We have narrowed this range of alternative standards to a relatively narrow range to account for the concern for individuals who may be exposed to exhaust emissions in enclosed spaces or other areas with limited airflow. We request comment on the appropriate emission standards for Large SI engines and our analysis of CO vs. HC+NO_x tradeoffs found in the RIA. We also request comment on the potential for manufacturers to take further steps to adopt automotive-type technologies that would reduce emissions beyond than the levels proposed in this document, either starting in 2007 or in a subsequent phase of standards.

Gasoline-fueled engines, which must generally operate with rich air-fuel ratios at heavy loads to avoid premature engine wear from overheating components, are further constrained in their ability to simultaneously control CO and HC+NO_x emissions. Furthermore, these engines are more likely to be used outdoors, where there is less concern for elevated exposure levels. We are therefore proposing to adopt alternate 2007 standards of 1.3 g/kW-hr (1.0 g/hp-hr) for HC+NO_x emissions and 27 g/kW-hr (20 g/hp-hr) for CO emissions. These alternate standards are based on preliminary emission measurements with optimized

gasoline-fueled engines showing the tradeoff of increasing CO emissions at very low NC+NO_x levels. We are not proposing any restriction on manufacturers' use of the alternate standards (for example, for specific fuels or applications). Rather, we expect the marketplace to ensure that low-CO engines are selected for applications involving significant operation in enclosed or partially enclosed areas. We believe this approach will maximize HC+NO emission reductions from engines where that is the most important emission contribution.

Except for these alternate standards, the proposed emission standards would apply uniformly to all Large SI engines. As described in the Draft Regulatory Support Document, based on our current information, we do not believe variations among engines significantly affect their potential to reduce emissions or their cost of meeting emission standards. We request comment on whether it is appropriate to differentiate between subclasses of engines to more closely tailor emission standards to the capabilities of individual engines or based on other relevant criteria, including cost. Also, Large SI engines power a wide range of equipment. We request comment on the ability of Large SI engines in various applications to incorporate emission-control technologies and maintain control of emissions over the full useful life. We currently have no information indicating that application-specific emission standards are appropriate for this class of engines, but we request comment on whether there are relevant distinctions with respect to different applications. We further request comment on whether application-specific standards may be relevant for Large SI engines and, if so, what those standards should be. Commenters should suggest an appropriate way of addressing any such distinctions in the regulations. Finally, we have developed this proposal based on the view that it is appropriate to set standards without regard to fuel type to prevent incentives for manufacturers to design engines to be fueled by fuels subject to less stringent standards. We have proposed standards based on this approach, but request comment on whether there are advantages to setting separate emission standards for engines powered by different fuels, and in particular, on the appropriate levels for such standards. A further discussion of the feasibility, estimated cost, and emission reductions are in the Draft Regulatory Support Document.

We believe that three years between phases of emission standards allows

manufacturers enough lead time to meet the more stringent emission standards. The projected emission-control technologies for the proposed 2004 emission standards should be capable of meeting the proposed 2007 emission levels with additional optimization and testing. In fact, manufacturers may be able to apply their optimization efforts before 2004, leaving only the additional testing demonstration for complying with the proposed 2007 standards. The biggest part of the optimization effort may be related to gaining assurance that engines will meet field-testing emission standards described in Section IV.D.5, since engines will not be following a prescribed duty cycle. EPA requests comment on the timing of the second phase of emission standards. Commenters should address the need to design and certify engines, distinguishing between time needed for developing new technology, recalibration of existing technology, development of test facilities, and the time needed to conduct testing. We also request comment on the air quality implications of adjusting the date of the long-term standards.

For gasoline and LPG engines, we are proposing the emission standard based on total hydrocarbon measurements, while California ARB standards are based on nonmethane hydrocarbons. We believe that switching to measurement based on total hydrocarbons should simplify testing, especially for field testing of in-use engines with portable devices (See Section IV.D.5). To maintain consistency with California ARB standards in the near term, we propose to allow manufacturers to base their certification through 2006 on either nonmethane or total hydrocarbons (see 40 CFR 1048.145 of the proposed regulations). Methane emissions from controlled engines operating on gasoline or LPG are about 0.1 g/kW-hr. We request comment on this approach.

Most of the emission data on which we base the proposed emission standards were generated from engines using liquefied petroleum gas (LPG). Operation of natural gas engines is very similar to that of LPG engines, with one noteworthy exception. Since natural gas consists primarily of methane, these engines have a much higher level of methane in the exhaust. Methane generally does not contribute to ozone formation, so it is often excluded from emission measurements. We therefore propose to use nonmethane hydrocarbon emissions for comparison with the standard for natural gas engines. While the proposed emission standards based on measuring emissions

in the field depend on total hydrocarbons, this is inconsistent with the nonmethane hydrocarbon measurements for certifying natural gas engines. We therefore propose to set a NO_x-only field-testing standard for natural gas engines instead of a NO_x+HC standard. Since control of NO_x emissions poses a significantly greater challenge for natural gas engines, certification testing should provide adequate assurance that these engines have sufficiently low nonmethane hydrocarbon emissions. We request comment on this proposed arrangement of emission standards and testing requirements to account for methane.

2. Could I Average, Bank, or Trade Emission Credits?

As described in Section III, we often give manufacturers the option of showing they meet emission standards using an emission-credit program that allows them to introduce a mix of technologies with average emission levels below the standards. The emission standards for Large SI engines proposed above are based on full compliance by all engine families without averaging, banking and trading at certification. (Note the separate discussion of averaging, banking, and trading that applies to testing in-use engines in Section IV.D.4.) In determining whether we should adopt an averaging, banking, and trading program in connection with promulgating a standard, we need to consider whether the adoption of such a program would affect the determination of what emission standards would "achieve the greatest degree of emission reduction achievable through [available technology] . . . giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology". The standards we are proposing for Large SI engines reflect our assessment of these statutory factors in the absence of an ABT program for these engines. If, after notice and comment, we decide that an ABT program is appropriate, we will need to reassess the appropriate level of these standards considering the statutory factors. The emission data described in the Draft Regulatory Support Document show that while all engines in this category are likely to be able to meet the proposed standard, some engines in this category are likely to be capable of operating at a level below the level of the proposed emission standards. Incorporating an emission-credit program without

adjusting the emission standards would allow manufacturers to produce some engines that have emissions that are higher than the levels we believe are capable of being met by all engines in the category. Given the emission data supporting the proposed emission standards, we believe that we would therefore need to set more stringent emission standards with averaging, banking, and trading provisions to achieve the "greatest degree of emission reduction" from these engines.

We request comment on including provisions to average, bank, and trade emission credits. We believe the appropriate standards with an emission-credit program would be 2.7 g/kW-hr (2.0 g/hp-hr) for HC+NO_x emissions and 2.7 g/kW-hr (2.0 g/hp-hr) for CO emissions. See the Draft Regulatory Support Document for further discussion of this issue. Making the comparable adjustments to the field-testing measurements described in Section IV.D.5 leads to field-testing standards under an emission-credit program of 3.8 g/kW-hr (2.8 g/hp-hr) for HC+NO_x emissions and 4.0 g/kW-hr (3.0 g/hp-hr) for CO emissions.

In addition, considering the frequent use of Large SI engines in enclosed areas, we may need to cap Family Emission Levels sufficiently to address concerns for exposure to elevated concentrations of CO, NO, and NO₂ emissions. The Draft Regulatory Support Document shows that emission levels of 3.4 g/kW-hr for HC+NO_x and for CO appear to be appropriate limits related to a scenario of exposure in enclosed or other limited-air flow areas. We also believe that there is no type of engine or application in the Large SI field that cannot accommodate the basic technologies associated with these emission levels, so this emission level would serve as an appropriate cap on Family Emission Levels in an emission-credit program for both HC+NO_x and CO emissions. We request comment on these issues.

For additional, general provisions of an emission-credit program, see the proposed regulation language in part 1051, subpart H for recreational vehicles. We request comment on all aspects of averaging, banking, and trading for Large SI engines. Commenters should address appropriate emission levels for the potential mix of technologies under consideration. This should include a discussion of any technology or market constraints (or incentives) that would lead manufacturers to differentiate their engines with varying degrees of emission control. In addition, we request comment on the possibility that

small-volume manufacturers with a limited product offering will be disadvantaged by an emission-credit program that may give larger companies a competitive advantage in selected markets.

As an alternative to a program of calculating emission credits for averaging, banking, and trading, we are proposing a simpler approach to help manufacturers transition to the proposed 2007 emission standards (see 40 CFR 1048.145 of the proposed regulations). Under this "family banking" concept, we would allow manufacturers to certify an engine family early. For each year of certifying an engine family early, the manufacturer would be able to delay certification of a smaller engine family by one year. This would be based on the actual sales of the early family and the projected sales volumes of the late family; this would require no calculation or accounting of emission credits. The manufacturer would verify that actual sales are consistent with projected sales at the end of the model year.

3. Is EPA Proposing Blue Sky Standards for These Engines?

We are proposing a staggered Blue Sky approach aligned with the introduction of new emission standards. In the 2003 model year, manufacturers could certify their engines to the requirements that apply starting in 2004 to qualify for the Blue Sky designation. Since manufacturers are producing engines with emission-control technologies starting in 2001, these engines would be available to customers outside of California desiring emission reductions or fuel-economy improvements. We request comment on whether we should make this available to 2002 model year engines. Similarly, for 2003 through 2006 model years, manufacturers could certify their engines to the requirements that start to apply in 2007. Finally, we propose to set a target of 1.3 g/kW-hr (1.0 g/hp-hr) HC+NO_x and 3.4 g/kW-hr (2.5 g/hp-hr) CO as a qualifying level for Blue Sky Series engines for all model years. The corresponding field-testing standards for Blue Sky Series engines would be 1.8 g/kW-hr (1.4 g/hp-hr) HC+NO_x and 5.0 g/kW-hr (3.8 g/hp-hr) CO. We request comment on the level of the voluntary standards starting in 2007. We also request comment on the advantages of additional labeling provisions that would advertise or promote these low-emission products.

4. What Durability Provisions Apply?

a. Useful life. We propose to set a minimum useful life period of seven

years or until the engine accumulates at least 5,000 operating hours, whichever occurs first. This figure, which California ARB also adopted, represents an operating period that is common for Large SI engines before they undergo rebuild. This also reflects a comparable degree of operation relative to the useful life values of 100,000 to 150,000 miles that apply to automotive engines (assuming an average driving speed of 20 to 30 miles per hour).

Some engines are designed for operation in severe-duty applications with a shorter expected lifetime. Concrete saws in particular undergo accelerated wear as a result of operating in an environment with high concentrations of highly abrasive, airborne concrete dust particles. In a previous rulemaking, we adopted a provision for a manufacturer to ask us to approve a useful life shorter than the minimum period that would otherwise apply. This shortened useful life would be based on information from manufacturers showing how long their engines typically operated. Extending that provision to Large SI engines would depend on a manufacturer including only engines from severe-duty applications in a given engine family. The likely practical benefits of segregating severe-duty engines would be to shorten the period for establishing deterioration factors and to avoid in-use testing on engines that are no longer meeting emission standards. We request comment on the appropriate approach to useful life values for severe-duty and other Large SI engines. We also request comment on any other limitations on manufacturers' ability to meet the proposed requirements that may be particular to severe-duty engines.

b. Warranty. We are proposing that manufacturers provide an emission-related warranty for at least the first half of an engine's useful life (in operating hours) or 3 years, whichever comes first. These periods must be longer if the manufacturer offers a longer mechanical warranty for the engine or any of its components; this includes extended warranties that are available for an extra price. In addition, we are proposing the warranty provisions adopted by California ARB for high-cost parts. For emission-related components whose replacement cost is more than about \$400, we are proposing a minimum warranty period of at least 70 percent of the engine's useful life (in operating hours) or 5 years, whichever comes first. See § 1048.120 for a description of which components are emission-related. We request comment on these proposed warranty provisions.

c. Maintenance instructions. We are proposing to apply minimum maintenance intervals much like those established by California ARB for Large SI engines. The minimum intervals define how much maintenance a manufacturer may specify to ensure that engines are properly maintained for staying within emission standards. We propose to allow manufacturers to schedule maintenance on the following components after 4,500 hours of use: catalysts, fuel injectors, electronic controls and sensors, and turbochargers.

There are two areas of maintenance for which we are especially concerned. The first is related to the durability of oxygen sensors. We recognize that if an oxygen sensor degrades or fails, emissions can increase significantly. It is important to create a strong incentive to use the most durable oxygen sensors available. That is why we are proposing to apply the 4,500-hour minimum interval to scheduled maintenance of oxygen sensors. We are also proposing diagnostic requirement to ensure that prematurely failing oxygen sensors are detected and replaced on an as-needed basis. If operators would fail to replace oxygen sensors after a fault signal, we would not consider that engine to be properly maintained. This would invalidate the emission-related warranty and make the engine ineligible for manufacturer in-use testing. We request comment on this approach.

Our second area of concern is related to the potential need to clean LPG fuel mixers. We are aware that for some existing designs, fuel mixers can become fouled to the point that they are unable to achieve proper control of air-fuel ratios. When this occurs, it can usually be remedied by simply removing the mixer and cleaning it. Chapter 4 of the Draft Regulatory Support Document describes this in further detail, including emission test data showing that fuel systems can be quite tolerant of deposits from fuel impurities. We request comment on (1) additional test data showing an effect of mixer fouling on emissions, (2) whether we should add mixer cleaning as a possible scheduled-maintenance item, and (3) how manufacturers could ensure that operators of in-use engines would do this cleaning.

d. Deterioration factors. We are proposing an approach that gives manufacturers wide discretion to establish deterioration factors for Large SI engines. The general expectation is that manufacturers will rely on emission measurements from engines have operated for an extended period, either in field service or in the laboratory. The manufacturer should do testing as

needed to be confident that their engines will meet emission standards under the in-use testing program. We expect to review deterioration factors to ensure that the projected deterioration is consistent with any engine testing under in-use testing program. In the first two or three years of certification, we would rely on manufacturers' technical judgment (instead of results from in-use testing) to appropriately estimate deterioration factors to protect themselves from the risk of noncompliance.

e. In-use fuel quality. Gasoline used in industrial applications is generally the same as that used for automotive applications. Improvements that have been made to highway-grade gasoline therefore carry over directly to nonroad markets. This helps manufacturers be sure that fuel quality will not degrade an engine's emission-control performance after several years of sustained operation.

In contrast, there are no enforceable industry or government standards for fuel quality for LPG. As a result, LPG composition can vary widely. Limited testing data show that this varying fuel quality has a relatively small direct effect on emissions from a closed-loop engine with a catalyst. The greater concern is that fuel impurities and heavy-end hydrocarbons may cause an accumulation of deposits that can prevent an emission-control system from functioning properly. While an engine's feedback controls can compensate for some restriction in air and fuel-flow, deposits may eventually prevent the engine from accurately controlling air-fuel ratios at stoichiometry. In any case, a routine cleaning step should remove deposits and restore the engine to proper functioning. We are aware of no systematic study of the effect of these deposits on in-use emissions, either from highway or from nonroad engines.

We request comment on the following things with respect to the quality of in-use LPG:

- The degree to which fuel quality affects emission durability, with supporting data.
- The ability of the proposed diagnostic requirements to alert the operator to the need for maintenance when the engine is no longer able to control air-fuel ratios at stoichiometry.
- The need for manufacturers to specify cleaning of fuel systems as part of critical emission-related maintenance, as described above.
- The possibility of applying engine technology to prevent fuel-related deposits.

- The potential to develop an industry-wide specification for in-use LPG motor fuels.
- The costs and benefits of fuel additives designed to prevent fuel-related deposits and how we could ensure that in-use fuels consistently include any appropriate additives.

5. Are There Other Requirements for Large SI Engines?

a. Crankcase emissions. Due to blowby of combustion gases and the reciprocating action of the piston, exhaust emissions can accumulate in the crankcase. Uncontrolled engine designs route these vapors directly to the atmosphere. We have long required that automotive engines prevent emissions from the engine's crankcase. Manufacturers generally do this by routing crankcase vapors through a valve into the engine's air intake system. We propose to require manufacturers to prevent crankcase emissions from Large SI engines. Since automotive engine blocks are already tooled for closed crankcases, the cost of adding a valve for positive-crankcase ventilation is very small. See the Draft Regulatory Support Document for further discussion of the costs and emission reductions associated with crankcase emissions.

b. Diagnosing malfunctions. We propose to require that Large SI engines diagnose malfunctioning emission-control systems starting with the 2007 model year (see § 1048.110). Three-way catalyst systems with closed-loop fueling control work well only when the air-fuel ratios are controlled to stay within a narrow range around stoichiometry.¹²⁵ Worn or broken components or drifting calibrations over time can prevent an engine from operating within the specified range. This increases emissions and can significantly increase fuel consumption and engine wear. The operator may or may not notice the change in the way the engine operates.

The proposed diagnostic requirement focuses solely on maintaining stoichiometric control of air-fuel ratios. This kind of design would detect problems such as broken oxygen sensors, leaking exhaust pipes, fuel deposits, and other things that would require maintenance to keep the engine at the proper air-fuel ratio.

Some companies are already producing engines with diagnostic systems that check for consistent air-fuel ratios. Their initiative supports the

idea that diagnostic monitoring provides a mechanism to help keep engines tuned to operate properly, with benefits for both controlling emissions and maintaining optimal performance. There are currently no inspection and maintenance programs for nonroad engines, so the most important variable in making the emission control and diagnostic systems effective is in getting operators to repair the engine when the diagnostic light comes on. This calls for a relatively simple design to avoid false failures as much as possible. The proposed diagnostic requirements therefore focus on detecting inappropriate air-fuel ratios, which is the most likely failure mode for three-way catalyst systems. We propose to specify that the malfunction-indicator light should go on when an engine operates for a full minute without reaching a stoichiometric air-fuel ratio. If this specified time is too long, we could be allowing extended open-loop operation with increased emission levels. We request comment on whether this approach is appropriate and whether this one-minute period should be longer or shorter to provide timely detection without causing false failures. In addition, we request comment on the appropriateness of other malfunction indicators, such as a measuring the frequency of crossing stoichiometry or monitoring the voltage range of oxygen sensors.

Some natural gas engines may meet standards with lean-burn designs that never approach stoichiometric combustion. While manufacturers may design these engines to operate at specific air-fuel ratios, catalyst conversion is not as sensitive to air-fuel ratio as with stoichiometric designs. We request comment on whether these engines should show a malfunction condition when departing from a targeted air-fuel ratio, or whether some other parameters would more appropriately detect for any possible failure modes.

For cars and light-duty trucks, our diagnostic system requirements call for monitoring of misfire and reduction in catalyst conversion efficiency. We are not proposing these additional diagnostic features for nonroad Large SI engines. Requiring misfire and catalyst conversion monitoring, which are more difficult to detect, would require extensive development effort to define appropriate failure thresholds and for manufacturers to design systems to avoid false failures and false positive detection. In the context of this rulemaking, which proposes initial standards for nonroad Large SI engines, we believe it is important for

manufacturers to design engines for low emissions before taking the step of designing a thorough, complex diagnostic system. We believe that monitoring air-fuel ratio will achieve the majority of the benefit available from diagnostic systems at a reasonable cost. Moreover, without a corresponding inspection-and-maintenance program, operators are most likely to respond to diagnostic warnings with a system that is clear and simple.

An example illustrates a typical scenario. One forklift operator driving an LPG-powered lift truck with three-way catalyst and closed-loop electronic controls noticed that he was able to run two hours shorter than usual on a standard tank of fuel. Since power characteristics were not noticeably affected, the operator had done no maintenance or investigation to correct the problem. Simply replacing the defective oxygen sensor restored the engine to its original level of performance (for fuel consumption and emission control). A diagnostic light would serve to alert operators that the engine needs attention and would provide help in identifying any specific parts causing the problem. Since the basic function of a three-way catalyst system is generally consistent with power and fuel-economy considerations, operators would have good reason to respond to a diagnostic light.

The automotive industry has developed a standardized protocol for diagnostic systems, including hardware specifications, and uniform trouble codes. Some of these will apply to nonroad engines, but some will not. In the proposed regulations we reference standards adopted by the International Organization for Standardization (ISO) for automotive systems. If these standards do not apply to the simpler diagnostic design proposed for Large SI engines, we encourage engine manufacturers to cooperate with each other and with other interested companies to develop new standards specific to nonroad engines.

As described in the proposed regulatory text, the malfunction light should go on when the system detects a malfunction and must stay on until the engine is serviced or until the engine returns to consistent, normal operation. Stored diagnostic trouble codes would identify as closely as possible the cause of the malfunction, which could then be read by any qualified technician.

We request comment on these proposed diagnostic system requirements.

¹²⁵ Stoichiometry is the proportion of a mixture of air and fuel such that the fuel is fully oxidized with no remaining oxygen. For example, stoichiometric combustion in gasoline engines typically occurs at an air-fuel mass ratio of about 14.7.

c. Evaporative emissions. Evaporative emissions occur when fuel evaporates and is vented into the atmosphere. They can occur while an engine or vehicle is operating and even while it is not being operated. Among the factors that affect evaporative emissions are:

- Fuel metering (fuel injectors or carburetor).
- The degree to which fuel permeates fuel lines and fuel tanks.
- Proximity of the fuel tank to the exhaust system or other heat sources.
- Whether the fuel system is sealed and the pressure at which fuel vapors are ventilated.

In addition, some gasoline fuel tanks may be exposed to heat from the engine compartment and high-temperature surfaces such as the exhaust pipe. In extreme cases, fuel can start boiling, producing very large amounts of gasoline vapors vented directly to the atmosphere.

Evaporative emissions from Large SI engines and the associated equipment represent a significant part of their overall hydrocarbon emissions. The magnitude of evaporative emissions varies widely depending on the engine design and application. LPG-fueled equipment generally has very low evaporative emissions because of the tightly sealed fuel system. At the other extreme, carbureted gasoline-fueled equipment can have high rates of evaporation. Southwest Research Institute measured emissions from several gasoline-fueled Large SI engines and found them to vary from about 12 g/day up to almost 100 g/day.¹²⁶ This study did not take into account the possibility of unusually high fuel temperatures during engine operation, as described further below.

We are proposing to require basic measures to reduce evaporative emissions from gasoline-fueled Large SI engines. The usual approach to regulating emissions from nonroad and other mobile engines is to define a measurement procedure and adopt numerical limit values (or standards) that together determine a minimum required level of performance. Manufacturers are then free to use any kind of technology to meet these performance standards.

Since the Act directs us to first consider regulating nonroad engines with standards similar to those that apply to motor vehicles, we must consider test-based evaporative emission standards that would be

comparable to those for automobiles. However, we have practical concerns with requiring that approach as the only option for manufacturers. These concerns relate primarily to the nonintegrated nature of these industries and the wide variety of applications in which the engines are used. Some manufacturers could face difficulties certifying to specific numerical emission levels because of the large variation in fuel system components needed to fit the many varied kinds of equipment. While a test-based standard may be feasible, we believe we should allow the use of other cost-effective approaches that could be more appropriate for this industry.

We propose to adopt an evaporative emission standard of 0.2 grams per gallon of fuel tank capacity for heating a fuel tank from 72° to 96° F. We further propose that manufacturers can rely on a design-based certification instead of measuring emissions by adopting one of the designs described in this paragraph. We have identified four technologies that would adequately prevent evaporative emissions to show compliance with the proposed evaporative emission standard. First, pressurized fuel tanks control evaporative emissions by suppressing vapor generation. In its standards for industrial trucks operating in certain environments, Underwriters Laboratories requires that trucks use self-closing fuel caps with tanks that stay sealed to prevent evaporative losses; venting is allowed for positive pressures above psi or for vacuum pressures of at least 1.5 psi.¹²⁷ Any Large SI engines or vehicles operating with these pressures would satisfy the certification requirements. Second, for applications where such high fuel tank pressures are undesirable, manufacturers could instead rely on an air bladder inside the fuel tank that changes in volume to keep the system in equilibrium at atmospheric pressure.¹²⁸ Third, an automotive-type system that stores fuel tank vapors for burning in the engine would be another alternative technology. Finally, collapsible bladder tanks, which change in volume to prevent generation of a vapor space or vapor emissions, are also commercially available. Also, similar to

¹²⁷ "Industrial Trucks, Internal Combustion Engine-Powered," UL558, ninth edition, June 28, 1996, paragraphs 26.1 through 26.4, Docket A-2000-01, document II-A-28. See Section XI.E for our consideration of incorporating the UL requirements into our regulations by reference.

¹²⁸ "New Evaporative Control System for Gasoline Tanks," EPA Memorandum from Charles Moulis to Glenn Passavant, March 1, 2001, Docket A-2000-01, document II-B-16.

the Underwriters Laboratories' requirement, we are proposing that manufacturers must use self-closing or tethered fuel caps to ensure that fuel tanks designed to hold pressure are not inadvertently left exposed to the atmosphere. Section 1048.105 of the proposed regulations describes these design specifications in greater detail. We request comment on these approaches and on whether we should consider tank insulation as an alternative or complementary strategy for meeting the proposed requirements on a design basis.

In addition, we propose to require that engine manufacturers use (or specify that equipment manufacturers installing their engines use) fuel lines meeting the industry performance standard for permeation-resistant fuel lines developed for motor vehicles.¹²⁹ While metal fuel lines do not have problems with permeation, manufacturers should use discretion in selecting materials for grommets and valves connecting metal components to avoid high-permeation materials. Evaporative emission standards for motor vehicles have led to the development of a wide variety of permeation-resistant polymer components.

Finally, manufacturers can take steps to reduce fuel temperatures during operation. The use of fuel injection and the associated recirculating fuel lines and in-tank fuel pumps may even increase the heat load into the fuel tank, which would tend to increase emission rates generally and may increase the occurrence of fuel boiling. The Underwriters Laboratories specification for forklifts attempts to address this concern through a specified maximum fuel temperature, but the current limit does not prevent fuel boiling.¹³⁰ We are proposing a standard that prohibits fuel boiling during continuous operation at 30° C (86° F). Engine manufacturers would have to incorporate designs that reduce the heat load to the fuel tank to prevent boiling. For companies that sell loose engines, this may involve instructions to equipment manufacturers to help ensure, for example, that fuel tank surfaces are exposed to ambient air rather than to exhaust pipes or direct engine heat. Engine manufacturers may specify a maximum fuel temperature for the final installation. Such a temperature limit should be well below 53° C (128° F), the

¹²⁹ SAE J2260 "Nonmetallic Fuel System Tubing with One or More Layers," November 1996.

¹³⁰ UL558, paragraph 19.1.1, Docket A-2000-01, document II-A-28.

¹²⁶ "Measurement of Evaporative Emissions from Off-Road Equipment," by James N. Carroll and Jeff J. White, Southwest Research Institute (SwRI 08-1076), November 1998, Docket A-2000-01, document II-A-10.

temperature at which summer-grade gasoline (9 RVP) typically starts boiling.

An additional source of evaporative emissions is from carburetors. Carburetors often have high hot soak emissions (immediately after engine shutdown). We expect manufacturers to convert carbureted designs to fuel injection as a result of the proposed exhaust emission standards. While we are not proposing to mandate this technology, we believe the need to reduce exhaust emissions will cause engine manufacturers to use fuel injection on all gasoline engines. This change alone would eliminate most hot soak emissions. We request comment on whether the procedure described in the previous paragraphs would require fuel injection. In addition, we request comment on the possibility of meeting the 2007 exhaust emission standards with carbureted engines.

Engine manufacturers using design-based certification would need to describe in the application for certification the selected design measures and specifications to address evaporative losses from gasoline-fueled engines. For loose-engine sales, this would include emission-related installation instructions that the engine manufacturer would give to equipment manufacturers.

With the ready availability of automotive technology and the development effort already in place to meet Underwriters Laboratories' requirements, we believe the proposed evaporative-control provisions would not pose a major development burden in most cases. We expect manufacturers generally to meet the proposed evaporative requirements with low-cost, off-the-shelf technologies. Individual engines may need somewhat more development effort to ensure compliance, but the hardware and testing costs would be minimal. We estimate an average cost of about \$10 per engine for those engines that would be subject to evaporative-emission standards. Once this program is fully phased in, we estimate over 7,500 tons of HC reductions annually. See the Draft Regulatory Support Document for further information about the estimated costs and benefits of evaporative emission controls.

Reducing evaporative losses would not only provide health and safety advantages, but would contribute to overall fuel savings from Large SI engines. We request comment on the proposed measures to control evaporative emissions, including the potential cost and effectiveness of (1) an evaporative emission standard at 0.2 g/gal of fuel, (2) the optional design

standards, and (3) the proposed fuel-line and fuel-temperature requirements. We also request comment on any additional or complementary approaches.

D. Proposed Testing Requirements and Supplemental Emission Standards

1. What Duty Cycles Would Be Used To Measure Emissions?

For 2004 through 2006 model years, we are proposing to use the same steady-state duty cycles adopted by California ARB. For most engines this involves the testing based on the ISO C2 duty cycle, with a separate duty cycle for constant-speed applications based on the ISO D2 duty cycle. These duty cycles are described further below.

Starting in 2007, we are proposing an expanded set of duty cycles, again with separate treatment for variable-speed and constant-speed applications. These duty-cycles are each comprised of three segments: (1) A warm-up segment, (2) a transient segment, and (3) a steady-state segment. Each of these segments, described briefly in this section, include specifications for the speed and load of the engine as a function of time. Measured emissions during the transient and steady-state segments must meet the emission standards that apply. In general, the proposed duty-cycles are intended to include representative operation from the wide variety of in-use applications. This includes highly transient low-speed forklift operation, constant-speed operation of portable equipment, and intermediate-speed vehicle operation. Chapter 4 of the Draft Regulatory Support Document describes the duty cycles in greater detail. We request comment on the proposed duty cycles.

Ambient temperatures in the laboratory must be between 20° and 30° C (68 and 86° F) during duty-cycle testing. This improves the repeatability of emission measurements when the engine runs through its prescribed operation. We nevertheless expect manufacturers to design for controlling emissions under broader ambient conditions, as described in Section IV.D.5.

The warm-up segment begins with a cold-start. This means that the engine should be very near room temperature before the test cycle begins. Once the engine is started, it would be operated over the first 3 minutes of the specified transient duty cycle without emission measurement. The engine then idles for 30 seconds before starting the prescribed transient cycle. The purpose of the warm-up segment is to bring the engine up to normal operating temperature in a standardized way. The

3-minute warm-up period allows enough time for engine-out emissions to stabilize, for the catalyst to warm up enough to become active, and for the engine to start closed-loop operation. This serves as a defined and achievable target for the design engineer to limit cold-start emissions to a relatively short period.

The transient segment of the general duty cycle is a composite of forklift and welder operation. This duty cycle was developed by selecting segments of measured engine operation from two forklifts and a welder as they performed their normal functions. This transient segment captures the wide variety of operation from a large majority of Large SI engines. Emissions measured during this segment are averaged over the entire transient segment to give a single value in g/kW.

Steady-state testing consists of engine operation for an extended period at several discrete speed-load combinations. Associated with these test points are weighting factors that allow a single weighted-average steady-state emission level in g/kW. The principal duty cycle is based on the ISO C2 cycle, which has five modes at various intermediate speed points, plus one mode at rated speed and one idle mode. The combined intermediate-speed points at 10, 25, and 50 percent account for over 70 percent of the total modal weighting. While any steady-state duty cycle is limited in how much it can represent operation of engines that undergo transient operation, the distribution of the C2 modes and their weighting values aligns significantly with expected and measured engine operation from Large SI engines. In particular, these engines are generally not designed to operate for extended periods at high-load, rated speed conditions. Field measurement of engine operation shows, however, that forklifts operate extensively at lower speeds than those included in the C2 duty cycle. While we believe the test points of the C2 duty cycle are representative of engine operation from many applications of Large SI engines, supplementing the steady-state testing with a transient duty cycle is necessary to adequately include engine operation characteristic of what occurs in the field.

Engines such as generators, welders, compressors, and pumps are governed to operate only at a single speed with varying loads. We are proposing a combination of transient and steady-state testing that applies specifically to constant-speed engines. The transient duty-cycle segment includes 20 minutes of engine operation based on measured

welder operation. We expect to propose this same transient duty cycle for constant-speed nonroad diesel engines. Manufacturers would also test constant-speed Large SI engines with steady-state operation based on the ISO D2 duty cycle, which specifies engine operation at rated speed with five different load points. This same steady-state duty cycle applies to constant-speed, nonroad diesel engines. Emission values measured on the D2 duty cycle are treated the same as values from the C2 duty cycle; the same numerical standards apply to both cycles. Manufacturers selling engines for both constant-speed and variable-speed applications would omit the constant-speed transient test, since that operation is included in the general transient test.

We are concerned that engines certified with the C2 duty cycle may be installed in constant-speed applications; or, similarly that engines certified with the D2 duty cycle may be installed in variable-speed applications. Since the C2 cycle includes very little operation at rated speed, it is not effective in ensuring control of emissions for constant-speed engines. The D2 cycle is even less capable of predicting emission performance from variable-speed engines. To address this, we are proposing that manufacturers routinely test engines on both the C2 and D2 duty cycles.¹³¹ Manufacturers selling only a variable-speed or only constant-speed engines in an engine family would be allowed to omit testing with the duty cycle that would not apply. With a more limited certification, however, we would require the manufacturer to add information to the engine label and any emission-related installation instructions to clarify that the engine has a limited certification. We request comment on this approach to variable- and constant-speed engines.

Some diesel-derived engines operating on natural gas with power ratings up to 1,500 or 2,000 kW may be covered by the proposed emission standards. Engine dynamometers with transient-control capabilities are generally limited to testing engines up to 500 or 600 kW. We propose at this time to waive emission standards and testing requirements related to transient duty cycles for engines above 560 kW. We would likely review this provision for Large SI engines once we have reached a conclusion on the same issue for nonroad diesel engines. We would expect to treat both types of engines the same way. Note that the field-testing

emission standards still apply to engines that don't certify to transient duty-cycle standards.

2. What Fuels Would Be Used During Emission Testing?

For gasoline-fueled Large SI engines, we are proposing to use the same specifications we have adopted for testing gasoline-fueled highway vehicles and engines. This includes the revised specification to cap sulfur levels at 80 ppm (65 FR 6698, February 10, 2000).

For LPG and natural gas, we are proposing to use the same specifications adopted by California ARB. We understand that in-use fuel quality for LPG and natural gas varies significantly in different parts of the country and at different times of the year. Not all in-use fuels outside California meet California ARB specifications for certification fuel, but fuels meeting the California specifications are nevertheless widely available. Test data show that LPG fuels with a much lower propane content have only slightly higher NO_x and CO emissions (see Chapter 4 of the Draft Regulatory Support Document for additional information). These data support our belief that engines certified using the specified fuel will achieve the desired emission reduction for a wide range of in-use fuels.

Unlike California ARB, we propose to apply the fuel specifications to testing only for emission measurements, not to service accumulation. We propose to allow service accumulation between emission tests with certification fuel or any commercially available fuel of the appropriate type. We would similarly allow manufacturers to choose between certification fuel and any commercial fuel for in-use measurements to show compliance with field-testing emission standards.

We request comment on appropriate fuel specifications for all types of engine testing.

3. Are There Proposed Production-Line Testing Provisions for Large SI Engines?

The provisions described in Section III.C.4 apply to Large SI engines. These proposed requirements are consistent with those adopted by California ARB. One new issue specific to Large SI engines relates to the duty cycles for measuring emissions from production-line engines.

For routine production-line testing, we propose to require emission measurements only with the steady-state duty cycles used for certification. Due to the cost of sampling equipment for transient engine operation, we are not proposing to require routine transient testing of production-line

engines. We believe that steady-state emission measurements will give a good indication of manufacturers' ability to build engines consistent with the prototypes on which their certification data are based. We also propose, however, to reserve the right to direct a manufacturer to measure emissions with a transient duty cycle if we believe it is appropriate. One indication of the need for this transient testing would be if steady-state emission levels from production-line engines are significantly higher than the emission levels reported in the application for certification for that engine family. For manufacturers with the capability of measuring transient emission levels at the production line, we would recommend doing transient tests to better ensure that in-use tests will not reveal problems in controlling emissions during transient operation. Manufacturers would not need to make any measurements to show that production-line engines can meet field-testing emission standards.

We request comment on all aspects of the proposed production-line testing requirements, including engine sampling rates and options for using alternative testing methods.

4. Are There Proposed In-Use Testing Provisions for Large SI Engines?

While the certification and production-line compliance requirements are important to ensure that engines are designed and produced in compliance with established emission limits, there is also a need to confirm that manufacturers build engines with sufficient durability to meet emission limits as they age in service. Consistent with the California ARB program, we are proposing to require engine manufacturers to conduct emission tests on a small number of field-aged engines to show they meet emission standards.

Under the proposed program, we may generally select up to 25 percent of a manufacturer's engine families in a given year to be subject to in-use testing (see Table IV.D-1). Most companies would need to test at most one engine family per year. Manufacturers may conduct in-use testing on any number of additional engine families at their discretion. We request comment on this maximum rate of testing engines under the proposed in-use testing program.

¹³¹ It would not be necessary to repeat the warm-up and transient segments for additional steady-state duty cycles.

TABLE IV.D-1.—MAXIMUM IN-USE TESTING RATE

Number of engine families for a manufacturer	Maximum number of families subject to in-use testing each year
1	1
2	1
3	1
4	1
5	1
6	1
7	1
8	2
9	2
10	2
11	2
12	3

We are also proposing that manufacturers in unusual circumstances have the ability to develop an alternate plan to fulfill any in-use testing obligations, consistent with a similar program we have adopted for outboard and personal watercraft marine engines. These circumstances include total sales for an engine family below 200 per year, installation only in applications where testing is not possible without irreparable damage to the vehicle or engine, or any other unique feature that prevents full emission measurements. We request comment on these provisions.

While this flexibility for alternate measurements would be available to small-volume manufacturers, we also request comment on applying in-use testing requirements to very small-volume engine families in general. While the proposed regulations would allow us to select an engine family every year from an engine manufacturer, there are several reasons why small volume manufacturers could expect a less demanding approach. These manufacturers may have only one or two engine families. If a manufacturer shows that an engine family meets emission standards in an in-use testing exercise, that could provide adequate data to show compliance for that engine family for a number of years, provided the manufacturer continues to produce those engines without significantly redesigning them in a way that could affect their in-use emissions performance and that we do not have other reason to suspect noncompliance. Also, where we had comfort that a manufacturer's engines were likely in good in-use compliance, we would generally take the approach of selecting engine families based on some degree of proportionality. To the extent that

manufacturers produce a smaller than average proportion of engines, they could expect that we would select their engine families less frequently, especially if other available data pointed toward clear in-use compliance.

We are also proposing that manufacturers in unusual circumstances have the ability to develop an alternate plan to fulfill any in-use testing obligations. These include total sales for an engine family below 200 per year, installation only in applications where testing is not possible without irreparable damage, or any other unique feature that prevents full emission measurements. We request comment on these provisions. While this flexibility would be available to small-volume manufacturers, we also request comment on applying in-use testing requirements to these companies in general. While the proposed regulations would allow us to select an engine family every year from an engine manufacturer, there are reasons why these companies could expect a less demanding approach. First, to avoid unfair treatment of individual manufacturers, we would generally take the approach of selecting engine families based on some degree of proportionality. To the extent that manufacturers produce a smaller than average proportion of engines, they could expect that we would select their engine families less frequently. In addition, our experience in implementing a comparable testing program for recreational marine engines provides a history of how we implement in-use testing requirements.

Engines can be tested one of two ways. First, manufacturers can remove engines from vehicles or equipment and test the engines on a laboratory dynamometer using certification procedures. For 2004 through 2006 model year engines, this would be the same steady-state duty cycle used for certification; manufacturers may optionally test engines on the dynamometer under transient operating conditions. For 2007 and later model year engines, manufacturers must test engines using both steady-state and transient duty cycles, as in certification.

Second, manufacturers may use the proposed equipment and procedures for testing engines without removing them from the equipment (referred to in this document as field-testing). See Section IV.D.5 for a more detailed description of how to measure emissions from engines during normal operation in the field. Since engines operating in the field cannot be controlled to operate on a specific duty cycle, compliance would be demonstrated by comparing the measured emission levels to the

proposed field-testing emission standards, which would have higher numerical value to account for the possible effects of different engine operation. Because the engine operation can be so variable, however, engines tested to show compliance only with the field-testing emission standards would not be eligible to participate in the in-use averaging, banking, and trading program (described below).

We could give directions to include specific types of normal operation to confirm that engines are controlling emissions in real operation. For example, for testing to show compliance with field-testing emission standards, we may identify specific types of operation on specific days or times to sample emissions, as long as these fall within the range of normal operation for the application. Dynamometer testing might include operation over a torque-speed trace measured from any appropriate equipment. If we don't provide specific direction, manufacturers would use their discretion to show that engines comply with the field-testing standards, much like for certification (see Section IV.D.5).

Along with the in-use testing program, we are proposing an in-use credit program designed to reduce compliance cost without reducing environmental benefits. The program would provide manufacturers with flexibility in addressing potential in-use noncompliance in a way that we agree would avoid the need for a determination of nonconformity under Clean Air Act section 207(c), and thereby avoid a recall. Participation in this program would be voluntary.

The flexibility of the proposed in-use credit program is appropriate given the particular circumstances of the Large SI engine industry. For an engine family failing in-use testing, we believe recalling the nonconforming engines may be particularly burdensome and impractical for this industry, mainly due to the difficulty of tracking the nonconforming engines. Recalling the engines would therefore require substantial resources, yet may not be highly effective in remedying the excess emissions.

Clean Air Act section 213 requires engines to comply with emission standards throughout their regulatory useful lives, and section 207 requires a manufacturer to remedy in-use nonconformity when we determine that a substantial number of properly maintained and used engines fail to conform with the applicable emission standards (42 U.S.C. 7541). Once we make this determination, recall would be necessary to remedy the

nonconformity. However, under these circumstances, where it is expected that recall would be impractical and largely ineffective, it is appropriate not to make a determination of substantial nonconformity where a manufacturer uses emission credits to offset in-use noncompliance. Thus, under the Clean Air Act, we may choose to make no section 207(c) determination of substantial nonconformity where an engine manufacturer uses emission credits to offset any noncompliance with the statute's in-use performance requirements. Though the language of section 213(d) is silent on the issue of emission credits, it generally allows considerable discretion in determining what modifications to the highway regulatory scheme are appropriate for nonroad engines.

In-use credits would be based on in-use testing conducted by the manufacturer. For a given engine family, the in-use compliance level would be determined by averaging the results from in-use testing performed for that engine family. If the in-use compliance level is below the applicable standard, the manufacturer would generate in-use credits for that engine family. If the in-use compliance level is above the standard, the engine family would experience a credit deficit. Manufacturers calculate credits based on the measured emission levels (when compared with applicable emission standards) and several additional variables, such as rated power, useful life, and engine family population. To ensure that emission credits show a real degree of emission control relative to the emission standard, we are proposing that emission credits must be based on transient duty-cycle operation on a dynamometer. An exception would apply for averaging emission levels from 2004 through 2006 model year engines, where we would allow for emission credits based on steady-state emission testing.

While we are proposing the in-use credit program adopted by California ARB, an additional concern relates to the status of emission credits over the long term. This would be our first step in setting emission standards for this category of engines, which increases the uncertainty of setting standards requiring the "greatest degree of emission reduction achievable," as called for in the Clean Air Act. If manufacturers are able to use the projected technologies to consistently achieve emission levels even lower than we require, in-use testing over several years can lead to a large pool of in-use emission credits. To avoid making the in-use testing program meaningless for

some engines, especially in the context of a transition to a next tier of emission standards, we would not intend to use credits older than three model years in deciding whether to take administrative action under section 207(c). This should address the concern for accumulating credits without taking away EPA and the manufacturers' substantial flexibility to use credits to offset marginally noncompliant engines.

We request comment on all aspects of the proposed in-use testing requirements.

5. What About Field-Testing Emission Standards and Test Procedures?

To enable field-testing of Large SI engines and to address concerns for controlling emissions outside of the specific duty cycles proposed to measure emissions for certification, we are proposing procedures and standards that apply to a wider range of normal engine operation.

a. What is the field-testing concept? Measuring emissions from engines in the field as they undergo normal operation while installed in nonroad equipment addresses two broad concerns. First, this provides a low-cost method of testing in-use engines. Second, testing has shown that emissions can vary dramatically under certain modes of operation. Field-testing addresses this by including emission measurements over the broad range of normal engine operation. This may include varying engine speeds and loads according to real operation and may include a reasonable range of ambient conditions, as described below.

No engine operating in the field can follow a prescribed duty cycle for a consistent measure of emission levels. Similarly, no single test procedure can cover all real-world applications, operations, or conditions. Specifying parameters for testing engines in the field and adopting an associated emission standard provides manufacturers with a framework for showing that their engines will control emissions under the whole range of normal operation in the relevant nonroad equipment.

To ensure that emissions are controlled from Large SI engines over the full range of speed and load combinations seen in the field, we are proposing supplemental emission standards that apply more broadly than the duty-cycle standard. These standards would apply to all regulated pollutants (NO_x, HC, and CO) under all normal operation (steady-state or transient). We propose to exclude abnormal operation (such as very low average power and extended idling

time), but not restrict operation to any specific combination of speeds and loads. In addition, we are proposing that the field-testing standards would apply under a broad range of in-use ambient conditions, both to ensure robust emission controls and to avoid overly restricting the times available for testing. These provisions are described in detail below.

b. What are the field-testing emission standards? Starting with the 2007 model year, we propose to apply field-testing emission standards of 4.7 g/kW-hr (3.5 g/hp-hr) for HC+NO_x emissions and 6.7 g/kW-hr (5.0 g/hp-hr) for CO emissions. As described above for the duty-cycle standards, we believe manufacturers will be able to use the additional time beyond 2004 to optimize their designs to control emissions under the full range of normal in-use operation. As described in Chapter 4 of the Draft Regulatory Support Document, we believe manufacturers can achieve these proposed emission standards using currently available three-way catalysts and electronically controlled fuel systems.

As described above, we are proposing alternate emission standards for those engines operating predominantly outdoors. The corresponding proposed field-testing standards are 1.8 g/kW-hr (1.3 g/hp-hr) for HC+NO_x emissions and 41 g/kW-hr (31 g/hp-hr) for CO emissions.

Manufacturers have expressed an interest in using field-testing procedures before the 2007 model year to show that they can meet emission standards as part of the in-use testing program. While we are not proposing specific field-testing standards for 2004 through 2006 model year engines, we are proposing to allow this as an option. In this case, manufacturers would conduct the field testing as described here to show that their engines meet the 4 g/kW-hr HC+NO_x standard and the 50 g/kW-hr CO standard. This could give manufacturers the opportunity to do testing at significantly lower cost compared with laboratory testing. Preliminary certification data from California ARB show that manufacturers are reaching steady-state emission levels well below emission standards, so we would expect any additional variability in field-testing measurements not to affect manufacturers' ability to meet the same emission standards. We request comment on the need for and appropriateness of this provision. We also request comment on whether there should be a separate field-testing standard, higher or lower than the proposed duty-cycle standards, to provide adequate assurance that the

engines operate with the required level of emission control.

These proposed field-testing standards are based on emission data measured with the same emission-control technology used to establish the duty-cycle standards. The higher numerical standard for field testing reflects the observed variation in emissions for varying engine operation, the projected effects of ambient conditions on the projected technology, and the accuracy limitations of in-use testing equipment and procedures. Conceptually, we believe that field-testing standards should primarily require manufacturers to adjust engine calibrations to effectively manage air-fuel ratios under varying conditions. The estimated cost of complying with emission standards includes an allowance for the time and resources needed for this recalibration effort (see Section IX.B. for total estimated costs per engine).

EPA generally requires manufacturers to show at certification that they are capable of meeting requirements that apply for any in-use testing. This adds a measure of assurance to both EPA and manufacturers that the engine design is sufficient for any in-use engines to pass any later testing. For Large SI engines, we are proposing that manufacturers show in their application for certification that they meet the field-testing standards. Manufacturers would submit a statement that their engines will comply with field-testing emission standards under all conditions that may reasonably be expected to occur in normal vehicle operation and use. The manufacturer would provide a detailed description of any testing, engineering analysis, and other information that forms the basis for the statement. This would likely include a variety of steady-state emission measurements not included in the prescribed duty cycle. It may also include a continuous trace showing how emissions vary during the transient test or it may include emission measurements during other segments of operation manufacturers believe is representative of the way their engines normally operate in the field.

Two additional provisions are necessary to allow emission testing without removing engines from equipment in the field. We are proposing to require manufacturers to design their engines to broadcast instantaneous speed and torque values to the onboard computer. We are also proposing a requirement to add an emission sampling port downstream of the catalyst.

The equipment and procedures for showing compliance with field-testing

standards also hold promise to reduce the cost of production-line testing. Companies with production facilities that have a dynamometer but no emission measurement capability could use the field-testing equipment and procedures to get a low-cost, valid emission measurement at the production line. Manufacturers may choose to use the cost advantage of the simpler measurement to sample a greater number of production-line engines. This would provide greater assurance of consistent emissions performance, but would also provide valuable quality-control data for overall engine performance. See the discussion of alternate approaches to production-line testing in Section III.C.4 for more information.

c. What limits are placed on field testing? The field-testing standards would apply to all normal operation. This could include steady-state or transient engine operation. Given a set of field-testing standards, the goal for the design engineer is to ensure that engines are properly calibrated for controlling emissions under any reasonably expected mode of engine operation. Engines may not be able to meet the emissions limit under all conditions, however, so we are proposing several parameters that would narrow the range of engine operation that would be subject to the field-testing standards. For example, emission sampling for field testing would not include engine starting.

Engines can often operate at extreme engine conditions (summer, winter, high altitude, etc.). To narrow the range of conditions for the design engineer, we are proposing to limit emission measurements during field testing to ambient temperatures from 13° to 35° C (55° to 95° F), and to ambient pressures from 600 to 775 millimeters of mercury (which should cover almost all normal pressures from sea level to 7,000 feet above sea level). This allows testing under a wider range of conditions in addition to helping ensure that engines are able to control emissions under the whole range of conditions under which they operate.

We are proposing some additional limits to define "normal" operation that could be included in field testing. These restrictions are intended to provide manufacturers with some certainty about what their design targets are and to ensure that compliance with the proposed field-testing standards would be feasible. These restrictions would apply to both variable-speed and constant-speed engine applications.

First, measurements with more than 2 minutes of continuous idle would be

excluded. This means that an emission measurement from a forklift while it idled for 5 minutes would not be considered valid. On the other hand, an emission measurement from a forklift that idled for 1 minute (continuous or intermittent) and otherwise operated at 40 percent power for several minutes would be considered a valid measurement. Measurements with in-use equipment in their normal service show that idle periods for Large SI engines are short, but relatively frequent. We should therefore not automatically exclude an emission sample if it includes an idling portion. At the same time, controlling emissions during extended idling poses a difficult design challenge, especially at low ambient temperatures. Exhaust and catalyst temperatures under these conditions can decrease enough that catalyst conversion rates decrease significantly. Since extended idling is not an appropriate focus of extensive development efforts at this stage, we believe the 2-minute threshold for continuous idle appropriately balances the need to include measurement during short idling periods with the technical challenges of controlling emissions under difficult conditions.

Second, we are proposing that the measured power during the sampling period must be above 5 percent of maximum power for an emission measurement to be considered valid. Brake-specific emissions (g/kW-hr) can be very high at low power because they are calculated by dividing the g/hr emission rate by a very small power level (kW). By ensuring that brake-specific emissions are not calculated by dividing by power levels less than 5 percent of the maximum, we can avoid this problem.

Third, gasoline-fueled engines need to run rich of stoichiometric combustion during extended high-load operation to protect against engine failure. This increases HC and CO emissions. We are accordingly proposing for gasoline-fueled engines that operation at 90 percent or more of maximum power must be less than 10 percent of the total sampling time. We would expect it to be uncommon for engine installations to call for such high power demand due to the shortened engine lifetime at very high-load operation. A larger engine could generally produce the desired power at a lower relative load, without compromising engine lifetime. Alternatively, applications that call for full-load operation typically use diesel engines. We propose to allow manufacturers to request a different threshold to allow more open-loop operation. Before we could approve

such a request, the engine manufacturer would need to have a plan for ensuring that the engines in their final installation would not routinely operate at loads above the specified threshold.

Fourth, as a part of the "normal operation" limitation, we are considering a limit on the frequency of accelerations. Very frequent acceleration events can make it difficult to consistently get enough air for combustion. Engine dynamometers also place a practical limit on the degree of transient operation that can be simulated in the laboratory. It would not be appropriate to exclude normal driving patterns, but drawing a line at the upper end of what happens in the field may be an appropriate constraint for field testing. This would likely take the form of a maximum frequency of acceleration events during the emission sampling period. We request comment on defining the most severe accelerations that we should include in field-testing as normal operation.

An additional parameter to consider is the minimum sampling time for field testing. A longer period allows for greater accuracy, due mainly to the smoothing effect of measuring over several transient events. On the other hand, an overly long sampling period can mask areas of engine operation with poor emission-control characteristics. To balance these concerns, we are proposing a minimum sampling period of 2 minutes. In other rules for diesel engines, we have allowed sampling periods as short as 30 seconds. Spark-ignition engines generally don't have turbochargers and they control emissions by maintaining air-fuel ratio with closed-loop controls through changing engine operation. Spark-ignition engines are therefore much less prone to consistent emission spikes from off-cycle or unusual engine operation. We believe the 2-minute sampling time requirement will ensure sufficient measurement accuracy and will allow for more meaningful measurements from engines that may be operated with very frequent but brief times at idle. We are not proposing a maximum sampling time. We would expect manufacturers testing in-use engines to select an approximate sampling time before measuring emissions. When selecting an engine family for the in-use testing program, we may add further direction related to the emission-sampling effort, such as sampling time or specific types of engine operation.

We request comment on whether these are appropriate constraints on sampling emissions using field-testing procedures. In particular, we request

comment on whether the limitations described are necessary or sufficient to target the whole range of normal operation that should be subject to emission standards.

d. How do I test engines in the field?
To test engines without removing them from equipment, analyzers would be connected to the engine's exhaust to detect emission concentrations during normal operation. Exhaust volumetric flow rate and continuous power output would also be needed to convert the analyzer responses to units of g/kW-hr for comparing to emission standards. We are proposing to calculate these values from measurements of the engine intake flow rate, the exhaust air/fuel ratio and the engine speed, and from torque information.

Small analyzers and other equipment are already available that could be adapted for measuring emissions from field equipment. A portable flame ionization detector could measure total hydrocarbon concentrations. Methane measurement currently requires more expensive laboratory equipment that is impractical for field measurements. Field-testing standards would therefore be based on total hydrocarbon emissions. A portable analyzer based on zirconia technology measures NO_x emissions. A nondispersive infrared (NDIR) unit could measure CO. Emission samples could best be drawn from the exhaust flow directly downstream of the catalyst material to avoid diluting effects from the end of the tailpipe. For this reason we request comment on a requirement for manufacturers to produce all their engines with this kind of sampling port in the exhaust pipe or at the end of the catalytic converter. Mass flow rates would also factor into the torque calculation; this could either be measured in the intake manifold or downstream of the catalyst.

Calculating brake-specific emissions depends on determining instantaneous engine speed and torque levels. We therefore propose to require that manufacturers design their engines to continuously monitor engine speed and torque. The proposed tolerance for speed measurements, which is relatively straightforward is ± 5 percent. For torque, the onboard computer would need to convert measured engine parameters into useful units. The manufacturer would probably need to monitor a surrogate value such as intake manifold pressure or throttle position (or both), then rely on a look-up table programmed into the onboard computer to convert these torque indicators into newton-meters. Manufacturers may also want to program the look-up tables for

torque conversion into a remote scan tool. Because of the greater uncertainty in these measurements and calculations, we are proposing that manufacturers produce their systems to report torque values that are within 85 and 105 percent of the true value. This broader range allows appropriately for the uncertainty in the measurement, while providing an incentive for manufacturers to make the torque reading as accurate as possible. Under-reporting torque values would over-predict emissions. These tolerances are taken into account in the selection of the field-testing standards, as described in Chapter 4 of the Draft Regulatory Support Document. We request comment on this approach to measuring in-use emissions and on any alternate approaches.

We request comment on all aspects of field-testing standards and procedures.

E. Special Compliance Provisions

We are proposing a variety of provisions to address the particular concerns of small-volume manufacturers of Large SI engines. These provisions are generally designed to address the limited capital and engineering resources of companies that produce very few engines.

As described in Section IV.B.4, we are proposing a provision to allow manufacturers to certify Large SI engines to emission standards for engines below 19 kW if they have displacement below 1 liter and rated power between 19 and 30 kW. We are proposing to expand this flexibility to include a limited number of engines up to 2.5 liters. This provision would be available for manufacturers producing 300 or fewer Large SI engines annually nationwide for the 2004 through 2006 model years. We request comment on this arrangement, especially in three areas. First, we request comment on the possible need to adjust the 30 kW cap for these engines to ensure that we include the appropriate engines. Second, we request comment on the sales threshold and whether a greater allowance would be necessary to accommodate the sales levels of small-volume manufacturers. Finally, since many of these engines may be used in places where individual exposure to CO emissions is a concern, we request comment on adopting an intermediate CO emission standard for these engines. The CO emission standard for engines rated below 19 kW is currently about 600 g/kW-hr. Engines with displacement between 1 and 2.5 liters generally have much lower CO emissions than small lawn and garden engines. Baseline emission levels on

small automotive-type engines shows that uncontrolled emission levels are about 130 g/kW-hr. We request comment on adopting this as a CO standard for engines that use the provision described in this paragraph.

Starting in 2007, we propose to discontinue the provisions described above for engines between 1 and 2.5 liters. In their place, we propose to adopt for three model years the standards that would otherwise apply in 2004 (4 g/kW-hr HC+NO_x and 50 g/kW-hr CO with steady-state duty cycles). Starting in 2010, there would no longer be separate emission standards for small-volume manufacturers. Since upgrading to the anticipated emission-control technology substantially improves performance, we expect that small-volume manufacturers may find it advantageous to introduce these technologies ahead of the schedule described here.

We are proposing several additional provisions to reduce the burden of complying with emission standards; we propose to apply these provisions to all manufacturers. These include (1) reduced production-line testing rates after consistent testing with good emission results, (2) allowance for alternative, low-cost testing methods to test production-line engines, (3) a flexible approach to developing deterioration factors, which gives the manufacturer broad discretion to develop appropriate emission-durability estimates.

We are also proposing provisions to address hardship circumstances, as described in Section VII.C. For Large SI engines, we are proposing a longer available extension of the deadline for meeting emission standards for small-volume manufacturers. Under this provision, we would extend the deadline by three years for companies that qualify for special treatment under the hardship provisions. We would, however, not extend the deadline for compliance beyond the three-year period. This approach considers the fact that, unlike most other engine categories, qualifying small businesses are more likely to be manufacturers designing their own products. Other types of engines more often involve importers, which are limited more by available engine suppliers than design or development schedules.

F. Technological Feasibility of the Standards

Our general goal in designing the proposed standards is to develop a program with technologically feasible standards that will achieve significant emission reductions. Our standards

must comply with Clean Air Act section 213(a)(3), as described in Section III.B. The Act also instructs us to first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 202 of the Act, taking into consideration technological feasibility, costs, and other factors (the relevant engines regulated under section 202 are automotive and highway truck engines). We are proposing emission standards that depend on the industrial versions of established automotive technologies. The most recent advances in automotive technology have made possible even more dramatic emission reductions. However, we believe that transferring some of these most advanced technologies would not be appropriate for nonroad engines at this time, especially considering the much smaller sales volumes for amortizing fixed costs and the additional costs associated with the first-time regulation of these engines. On the other hand, the proposed emission standards for Large SI align well with standards we have adopted for the next tier of heavy-duty highway gasoline engines (64 FR 58472, October 29, 1999). We have also adopted long-term standards for these engines that require significant further reductions with more sophisticated technologies (66 FR 5002, January 18, 2001).

To comply with the 2004 model year standards, manufacturers should not need to do any development, testing, or certification work that is not already necessary to meet California ARB standards in 2004. As shown in Chapter 4 of the Draft Regulatory Support Document, manufacturers can meet these standards with three-way catalysts and closed-loop fuel systems. These technologies have been available for industrial engine applications for several years. Moreover, several manufacturers have already completed the testing effort to certify with California ARB that their engines meet these standards. Complying with the proposed standards nationwide in 2004 would therefore require manufacturers only to produce greater numbers of the engines complying with the California standards.

Chapter 4 of the Draft Regulatory Support Document further describes data and rationale showing why we believe that the proposed 2007 model year emission standards under the steady-state and transient duty-cycles and field-testing procedures are feasible. In summary, SwRI testing and other data show that the same catalyst and fuel-system technologies needed to meet the 2004 standards can be optimized to

meet more stringent emission standards. Applying further development allows the design engineer to fine-tune control of air-fuel ratios and address any high-emission modes of operation to produce engines that consistently control emissions to very low levels, even considering the wide range of operation experienced by these engines. The proposed numerical emission standards are based on measured emission levels from engines that have operated for at least 5,000 hours with a functioning emission-control system. These engines demonstrate the achievable level of control from catalyst-based systems and provide a significant degree of basic development that should help manufacturers in optimizing their own engines.

We believe it is appropriate to initiate the second stage of standards in 2007, because we believe that applying these emission standards earlier would not allow manufacturers enough stability between introduction of different phases of emission standards to amortize their fixed costs and prepare for complying with the full set of requirements proposed in this notice. Three years of stable emission standards, plus the remaining lead time before 2004, allows manufacturers enough time to go through the development and certification effort to comply with the proposed standards. The proposed provisions to allow "family banking" for early compliance should provide an additional tool for companies that choose to spread out their design and certification efforts.

The proposed emission standards would either have no impact or a positive impact with respect to noise, energy, and safety, as described in Chapter 4 of the Draft Regulatory Support Document. In particular, the anticipated fuel savings associated with the expected emission-control technologies would provide a very big energy benefit related to new emission standards. The projected technologies are currently available and are consistent with those anticipated for complying with the emission standards adopted by California ARB. The lead time for the proposed interim and final emission standards allows manufacturers enough time to optimize these designs to most effectively reduce emissions from the wide range of Large SI equipment applications.

V. Recreational Marine Diesel Engines

This section describes the new provisions proposed for 40 CFR part 94, which would apply to engine manufacturers and other certificate holders. This section also discusses

proposed test equipment and procedures for anyone who tests engines to show they meet emission standards. We are proposing the same general compliance provisions from 40 CFR part 94 for engine manufacturers, equipment manufacturers, operators, rebuilders, and others. Similar general compliance provisions are described for the other engines included in this proposal in Section VII. See Section III for a description of our general approach to regulating nonroad engines and how manufacturers show that they meet emission standards.

A. Overview

We are proposing exhaust and crankcase emission standards for recreational marine diesel engines with power ratings greater than or equal to 37 kW. We are proposing emission standards for hydrocarbons (HC), oxides of nitrogen (NO_x), carbon monoxide (CO), and particulate matter (PM) beginning in 2006. We believe manufacturers will be able to use technology developed for use on land-based nonroad and commercial marine diesel engines. To encourage the introduction of low-emission technology, we are also proposing voluntary "Blue Sky" standards which are 40 percent lower than the proposed standards. We also recognize that there are many small businesses that manufacture recreational marine diesel engines; we are therefore proposing several regulatory flexibility options for small businesses that should help minimize any unique burdens caused by emission regulation. A history of environmental regulation for marine engines is presented in Section I.

We have determined there are at least 16 companies manufacturing marine diesel engines for recreational vessels. Six of the identified companies are considered small businesses as defined by the Small Business Administration (fewer than 1000 employees). Nearly 75 percent of diesel engines sales for recreational vessels in 2000 can be attributed to three large companies. Based on sales estimates for 2000, the six small businesses represent approximately 4 percent of recreational marine diesel engine sales. The remaining companies each comprise between two and seven percent of sales for 2000.

Diesel engines are primarily available in inboard marine configurations, but may also be available in sterndrive and outboard marine configurations. Inboard diesel engines are the primary choice for many larger recreational boats.

B. Engines Covered by This Proposal

The standards we are proposing in this section apply to recreational marine diesel engines. These engines were excluded from our final standards for commercial marine diesel engines finalized in 1999 because we thought their operation in planing mode might impose design requirements on recreational boat builders (64 CFR 73300, December 29, 1999). Commercial marine vessels tend to be displacement-hull vessels, designed and built for a unique commercial application (e.g., towing, fishing, general cargo). Power ratings for engines used on these vessels are analogous to land-based applications, and these engines are generally warranted for 2,000 to 5,000 hours of use. Recreational vessels, on the other hand, tend to be planing vessels, and engines used on these vessels are designed to achieve higher power output with less engine weight. This increase in power reduces the lifetime of the engine; recreational marine engines are therefore warranted for fewer hours of operation than their commercial counterparts. In our previous rulemaking, recreational engine industry representatives raised concerns about the ability of these engines to meet the standards without substantial changes in the size and weight of the engine. Such changes could have an impact on vessel builders, who might have to redesign vessel hulls to accommodate the new engines. Because most recreational vessel hulls are made on fiberglass molds, this could be a significant burden for recreational vessel builders.

Since we finalized the commercial marine diesel engine standards, we determined that recreational marine diesel engines can achieve those same emission standards without significant impacts on engine size and weight. Section V.G of this document and Chapters 3 and 4 of the Draft Regulatory Support Document describe the several technological changes we anticipate manufacturers will use to comply with the new emission standards. None of these technologies has an inherent negative effect on the performance or power density of an engine. As with engines in land-based applications, we expect that manufacturers will be able to use the range of technologies available to maintain or even improve the performance capabilities of their engines. We are nevertheless proposing to establish a separate program for recreational marine diesel engines in this rule. This will allow us to tailor certain aspects of the program to these applications, notably the not-to-exceed

requirements. We seek comment on whether this approach is appropriate or if we should remove the distinction and apply identical emission-control requirements to both commercial and recreational marine diesel engines.

To distinguish between commercial and recreational marine diesel engines for the purpose of emission controls, it is necessary to define "recreational marine diesel engine." According to the definition we finalized in our commercial marine diesel engine rule, recreational marine engine means a propulsion marine engine that is intended by the manufacturer to be installed on a recreational vessel. The engine must be labeled to distinguish it from a commercial marine diesel engine. The label must read: "THIS ENGINE IS CATEGORIZED AS A RECREATIONAL ENGINE UNDER 40 CFR PART 94. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS A VIOLATION OF FEDERAL LAW SUBJECT TO PENALTY."

We are also including in the proposed definition that a recreational marine engine must be a Category 1 marine engine (have a displacement of less than 5 liters per cylinder). One manufacturer commented after the ANPRM that only engines less than 2.5 liters per cylinder in displacement should be considered recreational. We request comment on this size cut-off and we request comment on allowing manufacturers flexibility in defining the upper limit of their recreational product line provided that it is between 2.5 and 5 liters per cylinder.

For the purpose of the recreational marine diesel engine definition, recreational vessel was defined as "a vessel that is intended by the vessel manufacturer to be operated primarily for pleasure or leased, rented, or chartered to another for the latter's pleasure." To put some boundaries on that definition, since certain vessels that are used for pleasure may have operating characteristics that are more similar to commercial marine vessels (e.g., excursion vessels and charter craft), we drew on the Coast Guard's definition of a "small passenger vessel" (46 U.S.C 2101(35)) to further delineate what would be considered to be a recreational vessel. Specifically, the term "operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure" would not include the following vessels: (1) Vessels of less than 100 gross tons that carry more than 6 passengers; (2) vessels of 100 gross tons or more than carry one or more passengers; or (3) vessels used solely for competition. For the purposes

of this definition, a passenger is defined by 46 U.S.C 2101 (21, 21a) which generally means an individual who pays to be on the vessel.

We received several comments in response to the ANPRM on these definitions. Engine manufacturers were concerned that the definitions may be unworkable for engine manufacturers, since they cannot know whether a particular recreational vessel might carry more than six passengers at a time. All they can know is whether the engine they manufacture is intended by them for installation on a vessel designed for pleasure and having the planing, power density and performance requirements that go along with that use.

We responded to similar concerns in the Summary and Analysis of Comments for the commercial marine diesel engine rule, explaining that a vessel would be considered a recreational vessel if the boat builder intends that the customer will operate the boat consistent with the recreational-vessel definition.¹³² Relying on the boat builder's intent is necessary since manufacturers need to establish a vessel's classification before it is sold, whereas the Coast Guard definitions apply at the time of use. The definition therefore relies on the intent of the boat builder to establish that the vessel will be used consistent with the above criteria. If a boat builder manufactures a vessel for a customer who intends to use the vessel for recreational purposes, we would always consider that a recreational vessel regardless of how the owner (or a subsequent owner) actually uses it.

We are proposing to retain our existing definition of recreational marine vessel. We request comment on all aspects of this definition. We are also requesting comment on how to verify the validity of the vessel manufacturer's original intent. One option, as noted in the Summary and Analysis of

Comments for the previous rule, would be written assurance from the buyer.

We are also requesting comment on two alternative approaches for the definition of recreational marine vessel that were suggested by ANPRM commenters. The first recommends that we follow the definition in 46 U.S.C. 2101(25), which defines a recreational vessel as one "being manufactured or operated primarily for pleasure, or leased, rented, or chartered to another for the latter's pleasure."¹³³ The second recommends that we define recreational vessel as one (1) which by design and construction is intended by the manufacturer to be operated primarily for pleasure, or to be leased, rented, or chartered to another for the latter's pleasure; and (2) whose major structural components are fabricated and assembled in an indoor production-line manufacturing plant or similar land-side operation and not in a dry dock, graving dock, or marine railway on the navigable waters of the United States.¹³⁴ We request comment on whether either of these definitions is preferable to the existing definition and, more specifically, on whether either of these alternative definitions would be sufficient to ensure that recreational marine diesel engines are installed on vessels that will be used only for recreational purposes.

C. Proposed Standards for Marine Diesel Engines

We are proposing technology-forcing emission standards for new recreational marine diesel engines with rated power greater than or equal to 37 kW. This section describes the proposed standards and implementation dates and gives an outline of the technology that can be used to achieve these levels. We request comment on these standards and dates. In particular, commenters should address whether the dates provide sufficient lead time. The

technological feasibility discussion below (Section V.G) describes our technical rationale in more detail.

1. What Are the Proposed Standards and Compliance Dates?

To propose emission standards for recreational marine diesel engines, we first considered the Tier 2 standards for commercial marine diesel engines. Recreational marine diesel engines can use all the technologies projected for Tier 2 and many of these engines already use this technology. This includes electronic fuel management, turbocharging, and separate-circuit aftercooling. In fact, because recreational engines have much shorter design lives than commercial engines, it is easier to apply raw-water aftercooling to these engines, which allows manufacturers to enhance performance while reducing NO_x emissions.

Engine manufacturers will generally increase the fueling rate in recreational engines, compared to commercial engines, to gain power from a given engine size. This helps bring a planing vessel onto the water surface and increases the maximum vessel speed without increasing the weight of the vessel. This difference in how recreational engines are designed and used affects emissions.

We are proposing to implement the commercial marine engine standards for recreational marine diesel engines, allowing two years beyond the dates that standards apply for the commercial engines. This would provide engine manufacturers with additional lead time in adapting technology to their recreational marine diesel engines. The proposed standards and implementation dates for recreational marine diesel engines are presented in Table V.C-1. The subcategories refer to engine displacement in liters per cylinder.

TABLE V.C-1.—PROPOSED RECREATIONAL CI MARINE EMISSION STANDARDS AND IMPLEMENTATION DATES

Subcategory	HC+NO _x g/kW-hr	PM g/kW-hr	CO g/kW-hr	Implement- ation date
power ≥ 37 kW	7.5	0.40	5.0	2007
0.5 ≤ disp < 0.9				
0.9 ≤ disp < 1.2	7.2	0.30	5.0	2006
1.2 ≤ disp < 2.5	7.2	0.20	5.0	2006
disp ≥ 2.5	7.2	0.20	5.0	2009

¹³² Summary and Analysis of Comments: Control of Emissions from Marine Diesel Engines. EPA420-R-99-028, November 1999, Docket A-97-50, document V-C-1.

¹³³ Statement of the Engine Manufacturers Association, Docket A-2000-01, Document No. II-D-33.

¹³⁴ Comments of the National Marine Manufacturers Association, Docket A-2000-01, Document II-D-27.

2. Will I Be Able To Average, Bank, or Trade Emissions Credits?

Section III.C.3 gives an overview of the proposed emission-credit program, which is consistent with what we adopted for Category 1 commercial marine diesel engines. We are proposing that the emission-credit program be limited to HC+NO_x and PM emissions.

Consistent with our land-based nonroad and commercial marine diesel engine regulations, we are proposing to disallow simultaneous generation of HC+NO_x credits and use of PM credits on the same engine family, and vice versa. This is necessary because of the inherent trade-off between NO_x and PM emissions in diesel engines. We request comment on whether an engine should be allowed to generate credits on one pollutant while using credits on another, and whether allowing such an additional flexibility would necessitate a reconsideration of the stringency of the proposed emission limits.

We are proposing the same maximum value of the Family Emission Limit (FEL) as for commercial marine diesel engines. For engines with a displacement of less than 1.2 liters/cylinder, the maximum values are 11.5 g/kW-hr HC+NO_x and 1.2 g/kW-hr PM; for larger engines, the maximum values are 10.5 g/kW-hr HC+NO_x and 0.54 g/kW-hr PM. These maximum FEL values were based on the comparable land-based emission-credit program and will ensure that the emissions from any given family certified under this program not be significantly higher than the applicable emission standards. We believe these proposed maximum values will prevent backsliding of emissions above the baseline levels for any given engine model. Also, we are concerned that the higher emitting engines could result in emission increases in areas such as ports that may have a need for PM or NO_x emission reductions. Balancing this concern is the fact that recreational marine diesel engines constitute a small fraction of PM and HC+NO_x emissions in nonattainment areas. Thus, if a few engine families have higher emissions than our proposed FEL cap, the incremental emissions in these areas may not be significant. Also, if we do not promulgate FEL caps for this category, manufacturers will need to offset high emitting engines with low-emitting engines to meet the average standard. We are interested in comments on these issues, on the degree to which FEL caps would hinder manufacturer flexibility and impose costs, and the environmental impact of FEL caps. We

ask commenters to address whether we should promulgate FEL caps.

As an alternative, we are requesting comment on whether we should consider using the MARPOL Annex VI NO_x standard as the appropriate NO_x FEL upper limit. Under this approach we would continue to use the land-based Tier 1 PM standard as the recreational marine diesel engine FEL upper limit. As part of this approach we would have to accommodate the fact that the MARPOL Annex VI standard is for NO_x only and these proposed standards are HC+NO_x. We further request comment under this approach as to how best to deal with this inconsistency.

We are proposing that emission credits generated under this program have no expiration, with no discounting applied. This is consistent with the commercial marine credit program and gives manufacturers greater flexibility in implementing their engine designs. However, if we were to revisit the standards proposed today at a later date, we would have to reevaluate this issue in the context of spillover of credits in the new program.

Consistent with the land-based nonroad diesel rule, we are also proposing to disallow using credits generated on land-based engines for demonstrating compliance with marine diesel engines. In addition, we propose that credits may not be exchanged between recreational and commercial marine engines. We are concerned that manufacturers producing land-based and/or commercial marine engines in addition to recreational marine engines could effectively trade out of the recreational marine portion of the program, thereby potentially obtaining a competitive advantage over small companies selling only recreational marine engines. In addition, there are two differences in the way that land-based, commercial marine, and recreational marine credits are calculated that make the credits somewhat incompatible. The first is that the difference in test duty cycles means there is an difference in calculated load factors for each of these categories of engines. The second is that there are significant differences in the useful lives. EPA seeks comment on the need for these restrictions and on the degree to which imposing them may create barriers to low-cost emission reductions.

We are proposing to allow early banking of emission credits once this rule is finalized. We believe that early banking of emission credits will allow for a smoother implementation of the recreational marine standards. These credits are generated relative to the

proposed standards and are undiscounted. We are aware that there are already some marine diesel engines that meet the proposed standards, and we are concerned about windfall credits from engines that generate early credits without any modifications to reduce emissions. We request comment on whether or not these engines should be able to generate credits.

We also propose that manufacturers have the option of generating credits relative to their pre-control emission levels. If manufacturers choose this option they will have to develop engine family-specific baseline emission levels. Credits will then be calculated relative to the manufacturer-generated baseline emission rates, rather than the standards. To generate the baseline emission rates, a manufacturer must test three engines from the family for which the baseline is being generated. The baseline will be the average emissions of the three engines. Under this option, engines must still meet the proposed standards to generate credits, but the credits will be calculated relative to the generated baseline rather than the standards. However, any credits generated between the level of the standards and the generated baseline will be discounted 10 percent. This is to account for the variability of testing in-use engines to establish the family-specific baseline levels, which may result from differences in hours of use and maintenance practices. We request comment on all aspects of the proposed emission-credit program.

One engine manufacturer commented after the ANPRM that all their recreational engine product lines fall into the per-cylinder displacement range with the proposed implementation date of 2006. This manufacturer expressed concern that it would be burdensome to introduce all their product lines at one time and presented the idea of phasing in their product lines from 2005 through 2007 instead. An alternative to early banking or a revised phase-in would be "family-banking." Under the "family-banking" concept, we would allow manufacturers to certify an engine family early. For each year of certifying an engine family early, the manufacturer would be able to delay certification of a smaller engine family by one year. This would be based on the actual sales of the early family and the projected sales volumes of the late family; this would require no calculation or accounting of emission credits. We request comment on this approach or any other approach that would help manufacturers bring the product lines into compliance to the proposed standards without

compromising emissions reductions (see § 1048.145 of the proposed regulations).

3. Is EPA Proposing Voluntary Standards for These Engines?

a. Blue Sky. Section III.B.5 gives an overview of Blue Sky voluntary standards. We are proposing to target about a 45-percent reduction beyond the mandatory standards as a qualifying level for Blue Sky Series engines to match the voluntary standards already adopted for commercial marine diesel engines (see Table V.C-2). While the Blue Sky Series emission standards are voluntary, a manufacturer choosing to certify an engine under this program must comply with all the requirements proposed for this category of engines, including allowable maintenance, warranty, useful life, rebuild, and deterioration factor provisions. This program would become effective immediately once we finalize this rule. We request comment on the Blue Sky Series approach as it would apply to recreational marine diesel engines.

TABLE V.C.-2.—BLUE SKY VOLUNTARY EMISSION STANDARDS FOR RECREATIONAL MARINE DIESEL ENGINES

Rated Brake Power (kW)	[g/kW-hr]	
	HC+NO _x	PM
power ≥ 37 kW	4.0	0.24
displ.<0.9		
0.9≤displ.<1.2	4.0	0.18
1.2≤displ.<2.5	4.0	0.12
2.5≤displ.	5.0	0.12

b. MARPOL Annex VI. The MARPOL Annex VI standards are discussed above in Section I.F.3 for marine diesel engines rated above 130 kW. We are not proposing to adopt the MARPOL Annex VI NO_x emission limits as Clean Air Act standards at this time. However, we encourage engine manufacturers to make Annex VI-compliant engines available and boat builders to purchase and install them prior to the implementation of our proposed standards. If the international standards are ratified in the U.S., they would go into effect retroactively to all boats built January 1, 2000 or later. One advantage of using MARPOL-compliant engines is that if this happens, users will be in compliance with the standard without having to make any changes to their engines.

To encourage boat manufacturers to purchase MARPOL Annex VI-compliant engines prior to the date the Annex goes into force for the United States, we are proposing a voluntary certification

program that will allow engine manufacturers to obtain a Statement of Voluntary Compliance to the MARPOL Annex VI NO_x limits. This voluntary approach to the MARPOL Annex VI emission limits depends on the assumption that manufacturers will produce MARPOL-compliant engines before the emission limits go into effect internationally. Engine manufacturers can use this voluntary certification program to obtain a Statement of Voluntary Compliance to the MARPOL NO_x limits.¹³⁵

We request comment on whether or not we should apply the MARPOL Annex VI standards as a first Tier to this proposed regulation. We also request comment on reasons for whether or not the MARPOL Annex VI standards should apply to recreational marine at all.

4. What Durability Provisions Apply?

There are several related provisions that would be needed to ensure that emission control would be maintained throughout the life of the engine. Section III gives a general overview of durability provisions associated with emissions certification. This section discusses these proposed provisions specifically for recreational marine diesel engines.

a. How long would my engine have to comply? We propose to require that manufacturers produce engines that comply over the full useful life of ten years or until the engine accumulates 1,000 operating hours, whichever occurs first. We would consider the hours requirement to be a minimum value for useful life, and would require manufacturers to comply for a longer period in those cases where they design their engines to be operated longer than 1,000 hours. In making the determination that engines are designed to last longer than the proposed hour limit, we would look for evidence that the engines continue to reliably deliver the necessary power output without an unacceptable increase in fuel consumption.

b. How would I demonstrate emission durability? We are proposing the same durability demonstration requirements for recreational marine diesel engines as already exist for commercial marine diesel engines. This means that recreational marine engine manufacturers, using good engineering judgment, would generally need to test one or more engines for emissions

before and after accumulating 1,000 operating hours (usually performed by continuous engine operation in a laboratory). The results of these tests are referred to as "durability data," and are used to determine the rates at which emissions are expected to increase over the useful life of the engine for each engine family (the rates are known as deterioration factors). However, in many cases, manufacturers would be allowed to use durability data from a different engine family, or for the same engine family in a different model year. Because of this allowance to use the same data for multiple engine families, we expect durability testing to be very limited.

We are also proposing the same provisions from the commercial marine rulemaking for how durability data are to be collected and how deterioration factors are to be generated. These requirements are in 40 CFR 94.211, 94.218, 94.219, and 94.220. These sections describe when durability data from one engine family can be used for another family, how to select to the engine configuration that is to be tested, how to conduct the service accumulation, and what maintenance can be performed on the engine during this service accumulation.

c. What maintenance would be allowed during service accumulation? For engines certified to a 1,000-hour useful life, the only maintenance that would be allowed is regularly scheduled maintenance unrelated to emissions that is technologically necessary. This could typically include changing engine oil, oil filter, fuel filter, and air filter. We request comment on the allowable maintenance during service accumulation.

d. Would production-line testing be required? We are proposing to apply the production-line testing requirements for commercial marine engines to recreational marine diesel engines, with the additional provisions described in Section III.C.4. A manufacturer would have to test one percent of its total projected annual sales of Category 1 engines each year to meet production-line testing requirements. We are proposing that manufacturers combine recreational and commercial engine families in calculating their sample sizes for production-line testing. We are not proposing a minimum number of tests, so a manufacturer could produce up to 100 marine diesel engines without doing any production-line testing.

5. Do These Standards Apply to Alternative-Fueled Engines?

These proposed standards apply to all recreational marine diesel engines,

¹³⁵ For more information about our voluntary certification program, see "guidance for Certifying to MARPOL Annex VI," VPCD-99-02. This letter is available on our website: <http://www.epo.gov/ataq/regs/nonraad/marine/ci/inolettr.pdf>.

without regard to the type of fuel used. While we are not aware of any alternative-fueled recreational marine engines that are currently being sold into the U.S. market, we are proposing alternate forms of the hydrocarbon standards to address the potential for natural gas-fueled and alcohol-fueled engines. In our regulation of highway vehicles and engines, we determined it is not appropriate to apply total hydrocarbon standards to engines fueled with natural gas (which is comprised primarily of methane), but rather that nonmethane hydrocarbon (NMHC) standards should be used (59 FR 48472, September 21, 1994). These alternate forms follow the precedent set in previous rulemakings to make the standards similar in stringency and environmental impact.

Similarly, we determined that alcohol-fueled highway engines and vehicles should be subject to HC-equivalent (HCE) standards instead of HC standards (54 FR 14426, April 11, 1989). HC-equivalent emissions are calculated from the oxygenated organic components and non-oxygenated organic components of the exhaust, summed together based on the amount of organic carbon present in the exhaust. Thus, we are proposing that alcohol-fueled recreational marine engines comply with total hydrocarbon equivalent (THCE) plus NO_x standards instead of THC plus NO_x standards.

6. Is EPA Controlling Crankcase Emissions?

We are proposing to require manufacturers to prevent crankcase emissions from recreational marine diesel engines, with one exception. We are proposing to allow turbocharged recreational marine diesel engines to be built with open crankcases, as long as the crankcase ventilation system allows measurement of crankcase emissions. For these engines with open crankcases, we will require crankcase emissions to be either routed into the exhaust stream to be included in the exhaust measurement, or to be measured separately and added to the measured exhaust mass. These measurement requirements would not add significantly to the cost of testing, especially where the crankcase vent is simply routed into the exhaust stream prior to the point of exhaust sampling. This proposal is consistent with our previous regulation of crankcase emissions from such diverse sources as commercial marine engines, locomotives, and passenger cars.

7. What Are the Smoke Requirements?

We are not proposing smoke requirements for recreational marine diesel engines. Marine diesel engine manufacturers have stated that many of their engines, though currently unregulated, are manufactured with smoke limiting controls at the request of customers. Users seek low smoke emissions both because they dislike the exhaust residue on decks and because they can be subject to penalties in ports with smoke emission requirements. In many cases, marine engine exhaust gases are mixed with water prior to being released. This practice reduces smoke visibility. Moreover, we believe the PM standards proposed here for diesel engines will have the effect of limiting smoke emissions as well. We request comment on this position and, specifically, on whether there is a need at this time for additional control of smoke emissions from recreational marine diesel engines, and if so, what the appropriate limits should be.

We also request comment on an appropriate test procedure for measuring smoke emissions, in case we choose to pursue smoke limits. There is currently no established test procedure for a marine engine to measure compliance with a smoke limit. Most propulsion marine engines operate over a torque curve governed by the propeller. Consequently, a vessel with an engine operating at a given speed will have a narrow range of torque levels. Some large propulsion marine engines have variable-pitch propellers, in which case the engine operates much like constant-speed engines. Note that the International Organization for Standardization (ISO) is working on a proposed test procedure for marine diesel engines.¹³⁶ As this procedure is finalized by ISO and emission data become available, we may review the issue of smoke requirements for all marine diesel engines. We request comment on this overall approach to smoke emissions from marine diesel engines, as well as comment on the draft ISO procedures.

8. What Are the Proposed Not-To-Exceed Standards and Related Requirements?

We are proposing not-to-exceed requirements similar to those finalized for commercial marine diesel engines. At the time of certification, manufacture would have to submit a statement that

its engines will comply with these requirements under all conditions that may reasonably be expected to occur in normal vessel operation and use. The manufacturer would provide a detailed description of all testing, engineering analysis, and other information that forms the basis for the statement. This certification could be based on testing or on other research which could be used to support such a statement that is consistent with good engineering judgment. We request comment on applying the proposed NTE requirements to recreational marine diesel engines and on the application of the requirements to these engines.

a. Concept. Our goal is to achieve control of emissions over the broad range of in-use speed and load combinations that can occur on a recreational marine diesel engine so that real-world emission control is achieved, rather than just controlling emissions under certain laboratory conditions. An important tool for achieving this goal is an in-use program with an objective standard and an easily implemented test procedure. Prior to this concept, our approach has been to set a numerical standard on a specified test procedure and rely on the additional prohibition of defeat devices to ensure in-use control over a broad range of operation not included in the test procedure.

We are proposing to apply the defeat device provisions established for commercial marine engines to recreational marine diesel engines in addition to the NTE requirements (see 40 CFR 94.2). A design in which an engine met the standard at the steady-state test points but was intentionally designed to approach the NTE limit everywhere else would be considered to be defeating the standard. Electronic controls that recognize when the engine is being tested for emissions and adjust the emissions from the engine would be an example of a defeat device, regardless of the emissions performance of the engine.

No single test procedure can cover all real-world applications, operations, or conditions. Yet to ensure that emission standards are providing the intended benefits in use, we must have a reasonable expectation that emissions under real-world conditions reflect those measured on the test procedure. The defeat-device prohibition is designed to ensure that emission controls are employed during real-world operation, not just under laboratory or test-procedure conditions. However, the defeat-device prohibition is not a quantified standard and does not have an associated test procedure, so it does not have the clear objectivity and ready

¹³⁶ International Standards Organization, 8178-4, "Reciprocating internal combustion engines—Exhaust emission measurement—Part 4: Test cycles for different engine applications," Docket A-2000-01, Document II-A-19.

enforceability of a numerical standard and test procedure. As a result, using a standardized test procedure alone makes it harder to ensure that engines will operate with the same level of control in the real world as in the test cell.

Because the ISO E5 duty cycle uses only five modes on an average propeller curve to characterize marine engine operation, we are concerned that an engine designed to the duty cycle would not necessarily perform the same way over the range of speed and load combinations seen on a boat. These duty cycles are based on average propeller curves, but a propulsion marine engine may never be fitted with an "average propeller." For instance, an engine fit to a specific boat may operate differently based on how heavily the boat is loaded.

To ensure that emissions are controlled from recreational marine engines over the full range of speed and load combinations seen on boats, we propose to establish a zone under the engine's power curve where the engine may not exceed a specified emission limit. This limit would apply to all of the regulated pollutants under steady-state operation. In addition, we propose

that the whole range of real ambient conditions be included in this "not-to-exceed" (NTE) zone testing. The NTE zone, limit, and ambient conditions are described below.

We believe there are significant advantages to taking this approach. The test procedure is very flexible so it can represent the majority of in-use engine operation and ambient conditions. Therefore, the NTE approach takes all of the benefits of a numerical standard and test procedure and expands it to cover a broad range of conditions. Also, laboratory testing makes it harder to perform in-use testing because either the engines would have to be removed from the vessel or care would have to be taken that laboratory-type conditions can be achieved on the vessel. With the NTE approach, in-use testing and compliance become much easier since emissions may be sampled during normal vessel use. Because this approach is objective, it makes enforcement easier and provides more certainty to the industry of what is expected in use versus over a fixed laboratory test procedure.

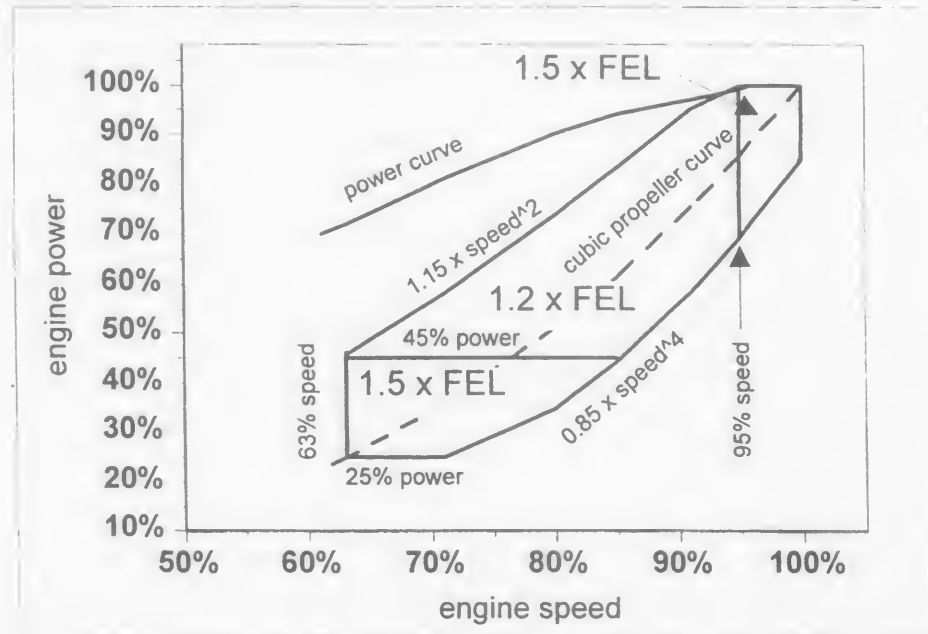
Even with the NTE requirements, we believe it is still important to retain

standards based on the steady-state duty cycles. This is the standard that we expect the certified marine engines to meet on average in use. The NTE testing is more focused on maximum emissions for segments of operation and should not require additional technology beyond what is used to meet the proposed standards. We believe basing the emission standards on a distinct cycle and using the NTE zone to ensure in-use control creates a comprehensive program. In addition, the steady-state duty cycles give a basis for calculating credits for averaging, banking, and trading.

b. Shape of the NTE zone. Figure V-C-1 illustrates our proposed NTE zone for recreational marine diesel engines. We based this zone on the range of conditions that these engines could typically see in use. Also, we propose to divide the zone into subzones of operation which have different limits as described below. Chapter 4 of the Draft Regulatory Support Document describes the development of the boundaries and conditions associated with the proposed NTE zone. We request comment on the proposed NTE zone.

BILLING CODE 6560-50-P

Figure V.C-1: Proposed NTE Zone for Recreational CI Marine Engines



BILLING CODE 6560-50-C

We propose to allow manufacturers to petition to adjust the size and shape of the NTE zone for certain engines if they

can certify that the engine will not see operation outside of the revised NTE zone in use. This way, manufacturers could avoid having to test their engines

under operation that they would never see in use. However, manufacturers would still be responsible for all operation of an engine on a vessel that

would reasonably be expected to be seen in use and would be responsible for ensuring that their specified operation is indicative of real-world operation. In addition, if a manufacturer designs an engine for operation at speeds and loads outside of the proposed NTE zone (i.e., variable-speed engines used with variable-pitch propellers), the manufacturer would be responsible for notifying us so their NTE zone can be modified appropriately to include this operation.

c. Transient operation. We are proposing that only steady-state operation be included in the NTE testing. We are basing the test for determining certification emissions levels on the ISO E5 steady-state duty cycles. The goal of the NTE, for this proposal, is to cover the operation away from the five modes on the assumed propeller curve. Our understanding is that the majority of marine engine operation is steady-state; however, we recognize that recreational marine use would likely be more transient than commercial marine use. At this time we do not have enough data on marine engine operation to accurately determine the amount of transient operation that occurs. We are aware that the high-load transient operation seen when a boat comes to plane would not be included in the NTE zone as defined, even if we would require compliance with NTE standards during transient operation. We are also aware that these speed and load points could not be achieved under steady-state operation for a properly loaded boat in use.

Our proposal to exclude transient operation from NTE testing is consistent with the commercial marine diesel requirements. Also, the proposed standards are technology-forcing and are for a previously unregulated industry. We believe excluding transient operation will simplify the requirements on this industry while still maintaining proportional emission reductions due to the technology-forcing nature of this proposal. We intend to study marine operation to understand better the effects of transient operation on emissions. If we find that excluding transient operation from the compliance requirements results in a significant increase in emissions, we will revisit this provision in the future. We request comment on the appropriateness of excluding transient operation from NTE requirements.

d. Emission standards. We are proposing emission standards for an NTE zone representing a multiplier times the weighted test result used for certification. Because an emission level is an average of various points over a

test procedure, a multiplier of is inconsistent with the idea of a Federal Test Procedure standard as an average. This is consistent with the concept of a weighted modal emission test, such as the steady-state tests included in this proposal.

Consistent with the requirements for commercial marine engines, we propose that recreational marine diesel engines must meet a cap of 1.5 times the certified level for HC+NO_x, PM, and CO for the speed and power subzone below 45 percent of rated power and a cap of 1.2 times the certified levels at or above 45 percent of rated power. However, we are proposing an additional subzone, when compared to the commercial NTE zone, at speeds greater than 95 percent of rated. We are proposing a cap of 1.5 times the certified levels for this subzone. This additional subzone addresses the typical recreational design for higher rated power. We understand that this power is needed to ensure that the engine can bring the boat to plane.

We are aware that marine diesel engines may not be able to meet the emissions limit under all conditions. Specifically, there are times when emission control must be compromised for startability or safety. We are not proposing that engine starting be included in the NTE testing. In addition, manufacturers would have the option of petitioning the Administrator to allow emissions to increase under engine protection strategies such as when an engine overheats. This is also consistent with the requirements for commercial marine engines.

e. Ambient conditions. Variations in ambient conditions can affect emissions. Such conditions include air temperature, humidity, and (especially for aftercooled engines) water temperature. We are proposing to apply the commercial marine engine ranges for these variables. Chapter 4 of the Draft Regulatory Support Document provides more detail on how we determined these ranges. Within the ranges, there is no calculation to correct measured emissions to standard conditions. Outside of the ranges, emissions can be corrected back to the nearest end of the range. The proposed ambient variable ranges are 13 to 35°C (55 to 95°F) for intake air temperature, 7.1 to 10.7 g water/kg dry air (50 to 75 grains/pound dry air) for intake air humidity, and 5 to 27°C (41 to 80°F) for ambient water temperature.

D. Proposed Testing Requirements

40 CFR part 94 details specifications for test equipment and procedures that apply generally to commercial marine engines. We propose to base the

recreational marine diesel engine test procedures on this part. Section VIII gives a general discussion of the proposed testing requirements; this section describes procedures that are specific to recreational marine such as the duty cycle for operating engines for emission measurements. Chapter 4 of the Draft Technical Support Document describes these duty cycles in greater detail.

1. Which Duty Cycles Are Used To Measure Emissions?

For recreational marine diesel engines, we are proposing to use the ISO E5 duty cycle. This is a 5-mode steady state cycle, including an idle mode and four modes lying on a cubic propeller curve. ISO intends for this cycle to be used for all engines in boats less than 24 meters in length. We propose to apply it to all recreational marine diesel engines to avoid the complexity of tying emission standards to boat characteristics. A given engine may be used in boats longer and shorter than 24 meters; engine manufacturers generally will not know the size of the boat into which an engine will be installed. Also, we expect that most recreational boats will be under 24 meters in length. Chapter 4 of the Draft Regulatory Support Document provides further detail on the ISO E5 duty cycle. We request comment on the appropriateness of this duty cycle.

2. What Fuels Will Be Used During Emission Testing?

We are proposing to use the same specifications for recreational marine diesel engines as we have used previously for commercial marine diesel engines. That means that the recreational engines will use the same test fuel that is required for testing Category 1 commercial marine diesel engines, which is a standard nonroad test fuel with moderate sulfur content. We are not aware of any difference in fuel specifications for recreational and commercial marine engines of comparable size.

3. How Would In-Use Testing Be Performed?

We have the authority to perform in-use testing on marine engines to ensure compliance in use. This testing may include taking in-use marine engines out of the vessel and testing them in a laboratory, as well as field testing of in use engines on the boat, in a marine environment. We request comments on the proposed in-use testing provisions described below.

We propose to use field-testing data in two ways. First, we would use it as a

screening tool, with follow-up laboratory testing over the ISO E5 duty cycle where appropriate. Second, we would use the data directly as a basis for compliance determinations provided that field testing equipment and procedures are capable of providing reliable information from which conclusions can be drawn regarding what emission levels would be in laboratory-based measurements.

For marine engines that expel exhaust gases underwater or mix their exhaust with water, we propose to require manufacturers to equip engines with an exhaust sample port where a probe can be inserted for in-use exhaust emission testing. It is important that the location of this port allow a well-mixed and representative sample of the exhaust. The purpose of this proposed provision is to simplify in-use testing.

One of the advantages of the not-to-exceed requirements will be to facilitate in-use testing. This will allow us to perform compliance testing in the field. As long as the engine is operating under steady-state conditions in the NTE zone, we will be able to measure emissions and compare them to the NTE limits.

E. Special Compliance Provisions

The provisions discussed here are designed to minimize regulatory burdens on manufacturers needing added flexibility to comply with the proposed engine standards. These manufacturers include engine dressers, small-volume engine marinizers, and small-volume boat builders.

1. What Are the Proposed Burden Reduction Approaches for Engine Dressers?

Many recreational marine diesel engine manufacturers take a new, land-based engine and modify it for installation on a marine vessel. Some of the companies that modify an engine for installation on a boat make no changes that would affect emissions. Instead, the modifications may consist of adding mounting hardware and a generator or reduction gears for propulsion. It can also involve installing a new marine cooling system that meets original manufacturer specifications and duplicates the cooling characteristics of the land-based engine, but with a different cooling medium (i.e., water). In many ways, these manufacturers are similar to nonroad equipment manufacturers that purchase certified land-based nonroad engines to make auxiliary engines. This simplified approach of producing an engine can more accurately be described as dressing an engine for a particular application. Because the modified land-

based engines are subsequently used on a marine vessel, however, these modified engines will be considered marine diesel engines, which then fall under these proposed requirements.

To clarify the responsibilities of engine dressers under this rule, we propose to exempt them from the requirement to certify engines to the proposed emission standards, as long as they meet the following seven proposed conditions.

(1) The engine being dressed (the "base" engine) must be a highway, land-based nonroad, or locomotive engine, certified pursuant to 40 CFR part 86, 89, or 92, respectively, or a marine diesel engine certified pursuant to this part.

(2) The base engine's emissions, for all pollutants, must be at least as good as the otherwise applicable recreational marine emission limits. In other words, starting in 2005, a dressed nonroad Tier 1 engine will not qualify for this exemption, because the more stringent standards for recreational marine diesel engines go into effect at that time.

(3) The dressing process must not involve any modifications that can change engine emissions. We would not consider changes to the fuel system to be engine dressing because this equipment is integral to the combustion characteristics of an engine.

(4) All components added to the engine, including cooling systems, must comply with the specifications provided by the engine manufacturer.

(5) The original emissions-related label must remain clearly visible on the engine.

(6) The engine dresser must notify purchasers that the marine engine is a dressed highway, nonroad, or locomotive engine and is exempt from the requirements of 40 CFR part 94.

(7) The engine dresser must report annually to us the models that are exempt pursuant to this provision and such other information as we deem necessary to ensure appropriate use of the exemption.

We propose that any engine dresser not meeting all these conditions be considered an engine manufacturer and would accordingly need to certify that new engines comply with this rule's provisions.

Under this proposal, an engine dresser violating the above criteria might be liable under anti-tampering provisions for any change made to the land-based engine that affects emissions. The dresser might also be subject to a compliance action for selling new marine engines that are not certified to the required emission standards.

2. What Was the Small Business Advocacy Review Panel?

As described in Section XI.B, the August 1999 report of the Small Business Advocacy Review Panel addresses the concerns of sterndrive and inboard engine marinizers, compression-ignition recreational marine engine marinizers, and boat builders that use these engines.

To identify representatives of small businesses for this process, we used the definitions provided by the Small Business Administration for engine manufacturers and boat builders. We then contacted companies manufacturing internal-combustion engines employing fewer than 1,000 people to be small-entity representatives for the Panel. Companies selling or installing such engines in boats and employing fewer than 500 people were also considered small businesses for the Panel. Based on this information, we asked 16 small businesses to serve as small-entity representatives. These companies represented a cross-section of both gasoline and diesel engine marinizers, as well as boat builders.

With input from small-entity representatives, the Panel drafted a report with findings and recommendations on how to reduce the potential small-business burden resulting from this proposed rule. The Panel's recommended flexibility options are described in the following sections.

3. What Are the Proposed Burden Reduction Approaches for Small-Volume Engine Marinizers?

We are proposing several flexibility options for small-volume engine marinizers. The purpose of these options is to reduce the burden on companies for which fixed costs cannot be distributed over a large number of engines. For this reason, we propose to define a small-volume engine manufacturer based on annual U.S. sales of engines. This production count would include all engines (automotive, other nonroad, etc.) and not just recreational marine engines. We propose to consider small businesses to be those that produce fewer than 1000 internal combustion engines per year. Based on our characterization of the industry, there is a natural break in production volumes above 500 engine sales where the next smallest manufacturers make tens of thousands of engines. We chose 1000 engines as a limit because it groups together all the marinizers most needing the proposed burden reduction approaches, while still allowing for reasonable sales growth.

The proposed flexibility options for small-volume marinizers are discussed below and would be used at the manufacturers' discretion. We request comment on the appropriateness of these flexibility options or other options.

a. Broaden engine families. We propose to allow small-volume marinizers to put all of their models into one engine family (or more as necessary) for certification purposes. Marinizers would then certify using the "worst-case" configuration. This approach is consistent with the flexibility offered to post-manufacture marinizers under the commercial marine regulations. The advantage of this approach is that it minimizes certification testing because the marinizer can certify a single engine in the first year to represent their whole product line. As for large companies, the small-volume manufacturers would then be able carry-over data from year to year until engine design changes occur that would significantly affect emissions.

We understand that this flexibility alone may not be able to reduce the burden enough for all small-volume manufacturers because it would still require a certification test. We consider this to be the foremost cost concern for some small-volume manufacturers, because the test costs are spread over low sales volumes. Also, we recognize that it may be difficult to determine the worst-case emitter without additional testing.

b. Minimize compliance requirements. We propose to waive production-line and deterioration testing for small-volume marinizers. We would assign a deterioration factor for use in calculating end-of-life emission factors for certification. The advantages of this approach would be to minimize compliance testing. Production-line and deterioration testing would be more extensive than a single certification test.

There are also some disadvantages of this approach, because there would be no testing assurance of engine emissions at the production line. This is especially a concern without a manufacturer-run in-use testing program. Also, assigned deterioration factors would not be as accurate as deterioration factors determined by the manufacturer through testing. We request comment on appropriate deterioration factors for the technology discussed in this proposal.

c. Expand engine dresser flexibility. We propose to expand the engine dresser definition for small-volume marinizers to include water-cooled turbochargers where the goal is to match the performance of the non water-cooled turbocharger on the original certified

configuration. We believe this would provide more opportunities for diesel marinizers to be excluded from certification testing if they operate as dressers.

There would be some potential for adverse emissions impacts because emissions are sensitive to turbo-matching; however, if the goal of the marinizer is to match the performance of the original turbocharger, this risk should be small. We recognize that this option would not likely benefit all diesel marinizers because changes to fuel management for power would not qualify under engine dressing.

d. Streamlined certification. We are requesting comment on allowing small-volume marinizers to certify to a performance standard by showing their engines meet design criteria rather than by certification testing. The goal would be to reduce the costs of certification testing. We are concerned that this approach must be implemented carefully to work effectively. This would put us in the undesirable position of specifying engine designs for marinizers, which we have historically avoided by setting performance standards.

We are not clear on how to set meaningful design criteria for marine diesel engines. We expect that emission reductions in diesel engines will be achieved through careful calibration of the engine fuel and air management systems using strategies such as timing retard and charge-air cooling. It may not be feasible to specify criteria for ignition timing, charge-air temperatures, and injection pressures that would ensure that every engine can achieve the targeted level of emission control. While we do not believe design criteria can be set to provide sufficient assurance of emission control from these engines, we ask for comment on any possible approaches.

We propose to allow small-volume marinizers to certify to the proposed not-to-exceed (NTE) requirements with a streamlined approach. We believe small-volume marinizers could make a satisfactory showing that they meet NTE standards with limited test data. Once these manufacturers test engines over the proposed five-mode certification duty cycle (E5), they could use those or other test points to extrapolate the results to the rest of the NTE zone. For example, an engineering analysis could consider engine timing and fueling rate to determine how much the engine's emissions may change at points not included in the E5 cycle. For this streamlined NTE approach, we propose that keeping all four test modes of the E5 cycle within the NTE standards

would be enough for small-volume marinizers to certify compliance with NTE requirements, as long as there are no significant changes in timing or fueling rate between modes. We request comment on this approach.

e. Delay standards for five years. We propose that small-volume marinizers not have to comply with the standards for five years after they take effect for larger companies. Under this plan the proposed standards would take effect from 2011 to 2014 for small-volume marinizers, depending on engine size. We propose that marinizers would be able to apply this delay to all or just a portion of their production. They could therefore still sell engines that meet the standards when possible on some product lines while delaying introduction of emission-control technology on other product lines. This option provides more time for small marinizers to redesign their products, allowing time to learn from the technology development of the rest of the industry.

While we are concerned about the loss of emission control from part of the fleet during this time, we recognize the special needs of small-volume marinizers and believe the added time may be necessary for these companies to comply with the proposed emission standards. This additional time will allow small-volume marinizers to obtain and implement proven, cost-effective emission-control technology. Some small-volume marinizers have expressed concern to the Small Business Advocacy Panel that large manufacturers could have competitive advantage if they market their engines as cleaner than the small-business engines. Other small-volume manufacturers commented that this provision would be useful to them.

We are also requesting comment on limited exemptions for small-volume marinizers. Under this sort of flexibility, upon request from a small-volume marinizer, we would exempt a small number of engines per year for 8 to 10 years. An example of a small-volume exemptions would be 50 marine diesel engines per year. We are concerned, however, that this approach may not be appropriate given our goal of reducing burden on small businesses without significant loss in emission control.

f. Hardship provisions. We are proposing two hardship provisions for small-volume marinizers. Marinizers would be able to apply for this relief on an annual basis. First, we propose that small marinizers could petition us for additional time to comply with the standards. The marinizer would have to make the case that it has taken all

possible steps to comply but the burden of compliance costs would have a major impact on the company's solvency. Also, if a certified base engine were available, we propose that the marinizer would have to use this engine. We believe this provision would protect small-volume marinizers from undue hardship due to certification burden. Also, some emission reduction could be gained if a certified base engine becomes available.

Second, we propose that small-volume marinizers could also apply for hardship relief if circumstances outside their control caused the failure to comply (such as a supply contract broken by parts supplier) and if failure to sell the subject engines would have a major impact on the company's solvency. We would consider this relief mechanism as a option to be used only as a last resort. We believe this provision would protect small-volume marinizers from circumstances outside their control.

g. Use of emission credits. We request comment on the appropriateness of allowing small-volume manufacturers to purchase credits under the streamlined certification approach described above. Under this approach, the engine's emission performance for purposes of certification is determined on the basis of design features rather than emission test results alone. Certification would therefore depend on engineering analysis and design criteria. Without a full set of emission test data, however, it would not be possible for these manufacturers to participate in an emission-credit program.

We believe the level of credits necessary to offset emissions from uncontrolled engines could be established conservatively to maximize assurance of compliance. For this reason, the baseline emissions of the uncontrolled engine could be based on the worst-case baseline data we are aware of, which would currently be 20 g/kW-hr HC+NO_x and 1 g/kW-hr PM. The credits needed would then be calculated using the proposed standards and the usage assumptions presented in Chapter 6 of the Draft Regulatory Support Document.

Under this limited emission-credit program, we propose that the participating manufacturer would be able to buy credits offered for sale by recreational marine diesel engine manufacturers certifying only on the basis of emission tests (not using the streamlined certification described above). We propose that cross-trading outside of recreational marine not be allowed, because it could prevent emission reductions from being

achieved in areas where boats contribute most significantly to local air pollution and it could prevent new technology from being applied to recreational marine engines. However, we request comment on whether or not small-volume marinizers should be able to use credits generated from other sectors such as land-based nonroad engines.

4. What Are the Proposed Burden Reduction Approaches for Small-Volume Boat Builders Using Recreational Marine Diesel Engines?

The SBAR Panel Report recommends that we propose burden reduction approaches for small-volume boat builders. This recommendation was based on the concern that, although boat builders would not be directly regulated under the proposed engine standards, they may need to redesign engine compartments on some boats if engine designs were to change significantly. Based on comments from industry, we believe these flexibility options may be appropriate; however, they may also turn out to be unnecessary.

We are proposing four flexibility options for small-volume vessel manufacturers using recreational marine diesel engines. The purpose of these options is to reduce the burden on companies for which fixed costs cannot be distributed over a large number of vessels. For this reason, we propose to define a small-volume boat builder as one that produces fewer than 100 boats for sale in the U.S. in one year and meets the Small Business Administration definition of a small business (fewer than 500 employees). The production count would include all engine-powered recreational boats. We propose that these flexibility options be used at the manufacturer's discretion. The proposed flexibility options for small-volume boat builders are discussed below. We request comment on the appropriateness of these or other flexibility options.

a. Percent-of-production delay. This proposed flexibility would allow manufacturers, with written request from a small-volume boat builder and prior approval from us, to produce a limited number of uncertified recreational marine engines. We propose that, over a period of five years (2006–2010), small-volume boat builders would be able to purchase uncertified engines to sell in boats for an amount equal to 80 percent of engine sales for one year. For example, if the small boat builder sells 100 engines per year, a total of 80 uncertified engines may be sold over the five-year period. This should give small boat builders

flexibility to delay using new engine designs for a portion of business.

We currently believe this flexibility is appropriate, however, it is possible that this flexibility could turn out to be unnecessary if the standards do not result in significant changes in engine size, power-to-weight ratio, or other parameters that would affect boat design. Moreover, custom boat builders may not need this flexibility if they design each boat from the ground up. We are also concerned that this flexibility could reduce the market for the certified engines produced by the engine manufacturers and could make it difficult for customs inspectors to know which uncertified engines can be imported. We therefore propose that engines produced under this flexibility would have to be labeled as such.

b. Small-volume allowance. This proposed flexibility is similar to the percent-of-production allowance, but is designed for boat builders with very small production volumes. The only difference with the above flexibility would be that the 80-percent allowance described above could be exceeded as long as sales do not exceed either 10 engines per year or 20 engines over five years (2006–2010). This proposed flexibility would apply only to engines less than or equal to 2.5 liters per cylinder.

c. Existing inventory and replacement engine allowance. We propose that small-volume boat builders be allowed to sell their existing inventory after the implementation date of the new standards. However, no purposeful stockpiling of uncertified engines would be permitted. This provision is intended to allow small boat builders flexibility to turn over engine designs.

d. Hardship relief provision. We propose that small boat builders could apply for hardship relief if circumstances outside their control caused the problem (for example, if a supply contract were broken by the engine supplier) and if failure to sell the subject vessels would have a major impact on the company's solvency. This relief would allow the boat builder to use an uncertified engine and would be considered a mechanism of last resort. These hardship provisions are consistent with those currently in place for post-manufacture marinizers of commercial marine diesel engines.

F. Technical Amendments

The proposed regulations include a variety of amendments to the programs already adopted for marine spark-ignition and diesel engines, as described in the following paragraphs.

1. 40 CFR Part 91

We have identified three principal amendments to the requirements for outboard and personal watercraft engines. First, we are proposing to add a definition of United States. This is especially helpful in clearing up questions related to U.S. territories in the Caribbean Sea and the Pacific Ocean. Second, we have found two typographical errors in the equations needed for calculating emission levels in 40 CFR 91.419. Finally, we are proposing to clarify testing rates for the in-use testing program. The regulations currently specify a maximum rate of 25 percent of a manufacturer's engine families. We are proposing to clarify that for manufacturers with fewer than four engine families, the maximum testing rate should be one family per year in place of the percentage calculation. We request comment on these amendments. Specifically, we request comment on whether there is a need to delay the effectiveness of any of these amendments to allow manufacturers time to comply with new requirements.

2. 40 CFR Part 94

We are proposing several regulatory amendments to the program for commercial marine diesel engines. Several of these are straightforward edits for correct grammar and cross references.

We propose to change the definition of United States, as described in the previous section.

We are proposing to add a definition for spark-ignition, consistent with the existing definition for compression-ignition. This would allow us to define compression-ignition as any engine that is not spark-ignition. This would help ensure that marine emission standards for the different types of engines fit together appropriately. We do not expect this change to affect any current engines.

The discussion of production-line testing in Section III includes a proposal to reduce testing rates after two years of consistent good performance. We propose to extend this provision to commercial marine diesel engines as well.

The test procedures for Category 2 marine engines give a cross-reference to 40 CFR part 92, which defines the procedures for testing locomotives and locomotive engines. Part 92 specifies a wide range of ambient temperatures for testing, to allow for outdoor measurements. We expect all testing of Category 2 marine engines to occur indoors and are therefore proposing to

adopt a range of 13° to 30° C (55° to 86° F) for emission testing.

We request comment on modifying the language prohibiting emission controls that increase unregulated pollutants. The existing language states:

An engine with an emission-control system may not emit any noxious or toxic substance which would not be emitted in the operation of the engine in the absence of such a system, except as specifically permitted by regulation.

Amended regulatory language would focus on preventing emissions that would endanger public welfare, rather than setting a standard that allows no tradeoff between pollutants. We are considering this also in emission-control programs for other types of engines, since various prospective engine technologies require more careful consideration of this issue.

You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. This applies especially if the engine emits any noxious or toxic substance it would otherwise not emit.

After completing the final rule for commercial marine diesel engines, manufacturers expressed a concern about the phase-in schedule for engine models under 2.5 liters per cylinder. Some of these engine models include ratings above 560 kW (750 hp). When we proposed emission standards for these engines, we suggested that the larger engines could certify according to an earlier schedule, since the lower-power engines from those product lines would need to meet emission standards for marine and land-based nonroad engines earlier. We received no comment on this position. We request comment on the need to accommodate manufacturers' calibration, certification, and production schedules in aligning the marine and land-based nonroad diesel engine emission standards and on what offsets are appropriate.

G. Technological Feasibility

We believe the emission-reduction strategies expected for land-based nonroad diesel engines and commercial marine diesel engines can also be applied to recreational marine diesel engines. Marine diesel engines are generally derivatives of land-based nonroad and highway diesel engines. Marine engine manufacturers and marinizers make modifications to the engine to make it ready for use in a vessel. These modifications can range from basic engine mounting and cooling changes to a restructuring of the power assembly and fuel management system.

Chapters 3 and 4 of the Draft Regulatory Support Document discuss this process in more detail. Also, we have collected emission data demonstrating the feasibility of the not-to-exceed requirements. These data are presented in Chapter 4 of the Draft Regulatory Support Document.

1. Implementation Schedule

For recreational marine diesel engines, the proposed implementation schedule allows an additional two years of delay beyond the commercial marine diesel standards. This represents up to a five-year delay in standards relative to the implementation dates of the land-based nonroad standards. This should reduce the burden of complying with the proposed regulatory scheme by allowing time for carryover of technology from land-based nonroad and commercial marine diesel engines. In addition, the proposed implementation dates represent four or more years of lead time beyond the planned date for our final rule.

2. Standard Levels

Marine diesel engines are typically derived from or use the same technology as land-based nonroad and commercial marine diesel engines and should therefore be able to effectively use the same emission-control strategies. In fact, recreational marine engines can make more use of the water they operate in as a cooling medium compared with commercial marine, because they are able to make use of raw-water aftercooling. This can help them reduce charge-air intake temperatures more easily than the commercial models and much more easily than land-based nonroad diesel engines. Cooling the intake charge reduces the formation of NO_x emissions.

3. Technological Approaches

We anticipate that manufacturers will meet the proposed standards for recreational marine diesel engines primarily with technology that will be applied to land-based nonroad and commercial marine diesel engines. Much of this technology has already been established in highway applications and is being used in limited land-based nonroad and marine applications. Our analysis of this technology is described in detail in Chapters 3 and 4 of the Draft Regulatory Support Document for this proposed rule and is summarized here. We request comment on the applicability of the technology discussed below for CI recreational marine engines.

Our cost analysis is based on the technology package which we believe

most manufacturers will apply and is described in Chapter 5 of the Draft Regulatory Support Document. Our estimated costs of control are an "average" based on this technology package. This assumes that reductions from the package are all necessary and that the performance in the area of emission reductions is linear. While we believe this is a reasonable approach for estimating the overall costs of compliance, we are also seeking comment on whether there are different technologies or different application of the technologies in our package which could affect the marginal costs of compliance. That is to say, is there an incremental difference in technology which would reduce (or increase) costs significantly, and thus significantly affect the costs of control for a small given margin of additional emission reduction.

By proposing standards that don't go into place until 2006, we are providing engine manufacturers with substantial lead time for developing, testing, and implementing emission-control technologies. This lead time and the coordination of standards with those for land-based nonroad engines allows time for a comprehensive program to integrate the most effective emission-control approaches into the manufacturers' overall design goals related to durability, reliability, and fuel consumption.

Engine manufacturers have already shown some initiative in producing limited numbers of low-NO_x marine diesel engines. More than 80 of these engines have been placed into service in California through demonstration programs. The Draft Regulatory Support Document further discusses these engines and their emission results. Through the demonstration programs, we were able to gain some insight into what technologies can be used to meet the proposed emission standards.

Highway engines have been the leaders in developing new emission-control technology for diesel engines. Because of the similar engine designs in land-based nonroad and marine diesel engines, it is clear that much of the technological development that has led to lower-emitting highway engines can be transferred or adapted for use on land-based nonroad and marine engines. Much of the improvement in emissions from these engines comes from "internal" engine changes such as variation in fuel-injection variables (injection timing, injection pressure, spray pattern, rate shaping), modified piston bowl geometry for better air-fuel mixing, and improvements intended to reduce oil consumption. Introduction

and ongoing improvement of electronic controls have played a vital role in facilitating many of these improvements.

Turbocharging is widely used now in marine applications, especially in larger engines, because it improves power and efficiency by compressing the intake air. Turbocharging may also be used to decrease particulate emissions in the exhaust. Today, marine engine manufacturers generally have to rematch the turbocharger to the engine characteristics of the marine version of a nonroad engine and often will add water jacketing around the turbocharger housing to keep surface temperatures low. Once the nonroad Tier 2 engines are available to the marine industry, matching the turbochargers for the engines will be an important step in achieving low emissions.

Aftercooling is a well established technology for reducing NO_x by decreasing the temperature of the charge air after it has been heated during compression. Decreasing the charge-air temperature directly reduces the peak cylinder temperature during combustion, which is the primary cause of NO_x formation. Air-to-water and water-to-water aftercoolers are well established for land-based applications. For engines in marine vessels, there are two different types of aftercooling: jacket-water and raw-water aftercooling. With jacket-water aftercooling, the fluid that extracts heat from the aftercooler is itself cooled by ambient water. This cooling circuit may either be the same circuit used to cool the engine or it may be a separate circuit. By moving to a separate circuit, marine engine manufacturers would be able to achieve further reductions in the charge-air temperature. This separate circuit could result in even lower temperatures by using raw water as the coolant. This means that ambient water is pumped directly to the aftercooler. Raw-water aftercooling is currently widely used in recreational applications. Because of the access that marine engines have to a large ambient water cooling medium, we anticipate that marine diesel engine manufacturers will largely achieve the reductions in NO_x emissions for this proposal through the use of aftercooling.

Electronic controls also offer great potential for improved control of engine parameters for better performance and lower emissions. Unit pumps or injectors would allow higher-pressure fuel injection with rate shaping to carefully time the delivery of the whole volume of injected fuel into the cylinder. Marine engine manufacturers should be able to take advantage of modifications to the routing of the

intake air and the shape of the combustion chamber of nonroad engines for improved mixing of the fuel-air charge. Separate-circuit aftercooling (both jacket-water and raw-water) will likely gain widespread use in turbocharged engines to increase performance and lower NO_x.

4. Our Conclusions

The proposed standards for recreational marine diesel engines reasonably reflect what manufacturers can achieve through the application of available technology. Recreational marine diesel engine manufacturers will need to use the available lead time to develop the necessary emission-control strategies, including transfer of technology from land-based nonroad and commercial marine CI engines. This development effort will require not only achieving the targeted emission levels, but also ensuring that each engine will meet all performance and emission requirements over its useful life. The proposed standards clearly represent significant reductions compared with baseline emission levels.

Emission-control technology for diesel engines is in a period of rapid development in response to the range of emission standards in place (and under consideration) for highway and land-based nonroad engines in the years ahead. This development effort will automatically transfer to some extent to marine engines, because marine engines are often derivatives of highway and land-based nonroad engines. Regardless, this development effort would need to expand to meet the proposed standards. Because the technology development for highway and land-based nonroad engines will largely constitute basic research of diesel engine combustion, the results should generally find direct application to marine engines.

Based on information currently available, we believe it is feasible for recreational marine diesel engine manufacturers to meet the proposed standards using combinations of technological approaches discussed above and in Chapters 3 and 4 of the Draft Regulatory Support Document. To the extent that the technologies described above may not yield the full degree of emission reduction anticipated, manufacturers could still rely on a modest degree of fuel-injection timing retard as a strategy for complying with the proposed emission standards.

In addition, we believe the flexibilities incorporated into this proposal will permit marinizers and boat builders to respond to engine changes in an orderly way. We expect that meeting these requirements will

pose a challenge, but one that is feasible taking into consideration the availability and cost of technology, time, noise, energy, and safety.

VI. Recreational Vehicles and Engines

A. Overview

This section applies to recreational vehicles. We are proposing to set new emission standards for snowmobiles, off-highway motorcycles, and all-terrain vehicles (ATVs). The engines used in these vehicles are a subset of nonroad SI engines.¹³⁷ In our program to set standards for nonroad SI engines below 19 kW (Small SI), we excluded recreational vehicles because they have different design characteristics and usage patterns than certain other engines in the Small SI category. For example, engines typically found in the Small SI category are used in lawn mowers, chainsaws, trimmers, and other lawn and garden applications. These engines tend to have low power outputs and operate at constant loads and speeds, whereas recreational vehicles can have high power outputs with highly variable engine loads and speeds. This suggests that these engines should be tested differently than Small SI engines. In the same way, we are proposing to treat snowmobiles, off-highway motorcycles, and ATVs separately from our Large SI engine program, which is described in Section IV. For recreational vehicles that are not snowmobiles, off-highway motorcycles, or ATVs, we propose to apply the standards otherwise applicable to nonroad SI engines (see Section VI.B.2).

We are proposing emission standards for hydrocarbons (HC), and carbon monoxide (CO) from all recreational vehicles and NO_x from off-highway motorcycles and ATVs. Many of these vehicles use two-stroke engines which emit high levels of HC and CO. We believe that vehicle and engine manufacturers will be able to use technology already established for other types of engines, such as highway motorcycles, small spark-ignition engines, and marine engines, to meet these near-term standards. To encourage the introduction of low-emission technology such as catalytic control and the conversion from two-stroke to four-stroke engines, we are also proposing a Voluntary Low Emission Standards program. We also recognize that there are many small businesses that manufacture recreational vehicles; we are therefore proposing several

regulatory special compliance provisions to reduce the burden of emission regulations on small businesses.

1. What Are Recreational Vehicles and Who Makes Them?

We are proposing to adopt new emission standards for off-highway motorcycles, all-terrain vehicles (ATVs), and snowmobiles. Eight manufacturers dominate the sales of these recreational vehicles. Of these eight manufacturers, seven of them manufacture a combination of two or more of the three main types of recreational vehicles. For example, there are four companies that manufacture both off-highway motorcycles and ATVs. There are three companies that manufacture ATVs and snowmobiles; one company manufactures all three. These eight companies represent approximately 95 percent of all domestic sales of recreational vehicles.

a. Off-highway motorcycles. Motorcycles come in a variety of configurations and styles. For the most part, however, they are two-wheeled, self-powered vehicles. Off-highway motorcycles are similar in appearance to highway motorcycles, but there are several important distinctions between the two types of machines. Off-highway motorcycles are not street-legal and are primarily operated on public and private lands over trails and open areas. Off-highway motorcycles tend to be much smaller, lighter and more maneuverable than their larger highway counterparts. They are equipped with relatively small-displacement single-cylinder two- or four-stroke engines ranging from 48 to 650 cubic centimeters (cc). The exhaust systems for off-highway motorcycles are distinctively routed high on the frame to prevent damage from brush, rocks, and water. Off-highway motorcycles are designed to be operated over varying surfaces, such as dirt, sand, or mud, and are equipped with knobby tires to give better traction in off-road conditions. Unlike highway motorcycles, off-highway motorcycles have fenders mounted far from the wheels and closer to the rider to keep dirt and mud from spraying the rider and clogging between the fender and tire. Off-highway motorcycles are also equipped with more advanced suspension systems than those for highway motorcycles. This allows the operator to ride over obstacles and make jumps safely.

Five companies dominate sales of off-highway motorcycles. They are long-established, large corporations that manufacture several different products including highway and off-highway

motorcycles. These five companies account for 90 to 95 percent of all domestic sales of off-highway motorcycles. There are also several relatively small companies that manufacture off-highway motorcycles, many of which specialize in racing or competition machines.

b. All-terrain vehicles. ATVs have been in existence for a long time, but have become increasingly popular over the last 25 years. Some of the earliest and most popular ATVs were three-wheeled off-highway models with large balloon tires. Due to safety concerns, the three-wheeled ATVs were phased-out in the mid-1980s and replaced by the current and more popular four-wheeled vehicle known as "quad runners" or simply "quads." Quads resemble the earlier three-wheeled ATVs except that the single front wheel was replaced with two wheels controlled by a steering system. The ATV steering system uses motorcycle handlebars, but otherwise looks and operates like an automotive design. The operator sits on and rides the quad much like a motorcycle. The engines used in quads tend to be very similar to those used in off-highway motorcycles—relatively small, single-cylinder two- or four-stroke engines. Quads are typically divided into utility and sport models. The utility quads are designed for recreational use but have the ability to perform many utility functions, such as plowing snow, tilling gardens, and mowing lawns. They are typically heavier and equipped with relatively large four-stroke engines and automatic transmissions with a reverse gear. Sport quads are smaller and designed primarily for recreational purposes. They are equipped with two- or four-stroke engines and manual transmissions.

There are two other less common types of ATVs, both of which are six-wheeled models. One looks similar to a large golf cart with a bed for hauling cargo, much like a pick-up truck. These ATVs are typically manufactured by the same companies that make quad runners and use similar engines. The other can operate both in water and on land. These amphibious ATVs typically have small gasoline-powered engines similar to those found in lawn and garden tractors, rather than the motorcycle engines used in quads, though some use automotive-based Large SI engines.

Of all of the types of recreational vehicles, ATVs have the largest number of major manufacturers. All but one of the companies noted above for off-highway motorcycles and snowmobiles are significant ATV producers. These seven companies represent over 95

¹³⁷ Almost all recreational vehicles are equipped with SI engines. Any diesel engines used in these applications must meet our emission standards for nonroad diesel engines.

percent of total domestic ATV sales. The remaining 5 percent of sales come from importers, which tend to import less expensive, youth-oriented ATVs.

c. Snowmobiles. Snowmobiles, also referred to as "sleds," are tracked vehicles designed to operate over snow. Snowmobiles have some similarities to off-highway motorcycles and ATVs. A snowmobile rider sits on and rides a snowmobile similar to an ATV. Snowmobiles use high-powered two- and three-cylinder two-stroke engines that look similar to off-highway motorcycle engines. Rather than wheels, snowmobiles are propelled by a track system similar to what is used on a bulldozer. The snowmobile is steered by two skis at the front of the sled. Snowmobiles use handlebars similar to off-highway motorcycles and ATVs. The typical snowmobile seats two riders comfortably. Over the years, snowmobile performance has steadily increased to the point that many snowmobiles currently have engines over 100 horsepower and are capable of exceeding 100 miles per hour. The proposed definition for snowmobiles includes a limit of 1.5-meter width to differentiate conventional snowmobiles from ice-grooming machines and snow coaches, which use very different engines. We request comment on this definition and on any other approaches to differentiate these products.

There are four major snowmobile manufacturers, accounting for more than 99 percent of all domestic sales. The remaining sales come from very small manufacturers who tend to specialize in expensive, high-performance designs.

d. Other recreational vehicles. Currently, our Small SI nonroad engine regulations cover all recreational engines that are under 19 kW (25 hp) and have either an installed speed governor or a maximum engine speed less than 5,000 rpm. Recreational vehicles currently covered by the Small SI standards include go-carts, golf carts, and small mini-bikes. Although some off-highway motorcycles, ATVs and snowmobiles have engines with rated horsepower less than 19 kW, they all have maximum engine speeds greater than 5,000 rpm. Thus they have not been included in the Small SI regulations. The only other types of small recreational engines not covered by the Small SI rule are those engines under 19 kW that aren't governed and have maximum engine speed of at least 5,000 rpm. There are relatively few such vehicles with recreational engines not covered by the Small SI regulations. The best example of vehicles that fit in this category are scooters and skateboards

that are powered by very small gasoline spark-ignition engines. The engines used on these vehicles are typically the same as those used in string trimmers or other lawn and garden equipment, which are covered under the Small SI regulations. Because these engines are generally already covered by the Small SI regulations and are the same as, or very similar to, engines as those used in lawn and garden applications, we are proposing to revise the Small SI rules to cover these engines under the Small SI regulations. To avoid any problems in transitioning to meet emission standards, we propose to apply these standards in 2006. We request comments on these issues.

2. What Is the Regulatory History for Recreational Vehicles?

California ARB established standards for off-highway motorcycles and ATVs, which took effect in January 1997 (1999 for vehicles with engines of 90 cc or less). California has not adopted standards for snowmobiles. The standards, shown in Table VI.A-1, are based on the highway motorcycle chassis test procedures. Manufacturers may certify ATVs to optional standards, also shown in Table VI.A-1, which are based on the utility engine test procedure.¹³⁸ This is the test procedure over which Small SI engines are tested. The stringency level of the standards was based on the emission performance of 4-stroke engines and advanced 2-stroke engines with a catalytic converter. California ARB anticipated that the standards would be met initially through the use of high performance 4-stroke engines.

TABLE VI.A-1.—CALIFORNIA OFF-HIGHWAY MOTORCYCLE AND ATV STANDARDS FOR MODEL YEAR 1997 AND LATER

[1999 and later for engines at or below 90 cc]

	HC	NO _x	CO	PM
Off-highway motorcycle and ATV standards (g/km)	*1.2	.....	15	.....
	HC + NO _x	CO	PM	
Optional standards for ATV engines below 225 cc (g/bhp-hr)	*12.0	300	.....

¹³⁸ Notice of Off-Highway Recreational Vehicle Manufacturers and All Other Interested Parties Regarding Alternate Emission Standards for All-Terrain Vehicles, Mail Out #95-16, April 28, 1995, California ARB (Docket A-2000-01, document II-D-06).

	HC + NO _x	CO	PM
Optional standards for ATV engines at or above 225 cc (g/bhp-hr)	*10.0	300	.....

* Corporate-average standard.

California revisited the program because a lack of certified product from manufacturers was reportedly creating economic hardship for dealerships. The number of certified off-highway motorcycle models was particularly inadequate.¹³⁹ In 1998, California revised the program, allowing the use of uncertified products in off-highway vehicle recreation areas with regional/seasonal use restrictions. Currently, noncomplying vehicles may be sold in California and used in attainment areas year-round and in nonattainment areas during months when exceedances of the state ozone standard are not expected. For enforcement purposes, certified and uncertified products are identified with green and red stickers, respectively. Only about one-third of off-highway motorcycles selling in California are certified. All certified products have 4-stroke engines.

B. Engines Covered by This Proposal

We are proposing new emission standards for all new off-highway motorcycles, all-terrain vehicles (ATVs), and snowmobiles. We are also proposing to apply existing Small SI emission standards to other recreational vehicles, as described above. The engines used in these vehicles tend to be small, air-or liquid-cooled, reciprocating Otto-cycle engines that operate on gasoline.¹⁴⁰ With the exception of what we define as "other recreational vehicles," these engines are designed to be used in vehicles, where engine performance is characterized by highly transient operation, with a wide range of engine speed and load capability. Maximum engine speed is typically well above 5,000 rpm. Also, with the exception of snowmobiles, the vehicles are typically equipped with transmissions rather than torque converters to ensure performance under a variety of operating conditions.¹⁴¹

¹³⁹ Initial Statement of Reasons, Public Hearing to Consider Amendments to the California Regulations for New 1997 and Later Off-highway Recreational Vehicles and Engines, California ARB, October 23, 1998 (Docket A-2000-01, document II-D-08).

¹⁴⁰ Otto cycle is another name for a spark-ignition engine which utilizes a piston with homogeneous external or internal air and fuel mixture formation and spark ignition.

¹⁴¹ Snowmobiles use continuously variable transmissions, which tend to operate like torque converters.

1. Two-Stroke vs. Four-Stroke Engines

The engines used by recreational vehicles can be separated into two distinct designs: two-stroke and four-stroke. The distinction between two-stroke and four-stroke engines is important for emissions because two-stroke engines tend to emit much greater amounts of unburned hydrocarbons (HC) and particulate matter (PM) than four-stroke engines of similar size and power. Two-stroke engines also have greater fuel consumption than four-stroke engines, but they also tend to have higher power output per-unit displacement, lighter weight, and better cold-starting performance. These advantages, combined with a simple design and lower manufacturing costs, tend to make two-stroke engines popular as a power unit for recreational vehicles. With the exception of a few youth models, almost all snowmobiles use two-stroke engines. Currently, about 63 percent of all off-highway motorcycles (predominantly in high performance, youth, and entry-level bikes) and 20 percent of all ATVs sold in the United States use two-stroke engines.

The basis for the differences in engine performance and exhaust emissions between two-stroke and four-stroke engines can be found in the fundamental differences in how two-stroke and four-stroke engines operate. Four-stroke operation takes place in four distinct steps: intake, compression, power, and exhaust. Each step corresponds to one up or down stroke of the piston or 180° of crankshaft rotation. The first step of the cycle is for an intake valve in the combustion chamber to open during the intake stroke, allowing a mixture of air and fuel to be drawn into the cylinder while the piston moves down the cylinder. The intake valve then closes and the momentum of the crankshaft causes the piston to move back up the cylinder, compressing the air and fuel mixture. At the very end of the compression stroke, the air and fuel mixture is ignited by a spark from a spark plug and begins to burn. As the air and fuel mixture burns, increasing temperature and pressure cause the piston to move back down the cylinder. This is referred to as the "power" stroke. At the bottom of the power stroke, an exhaust valve opens in the combustion chamber and as the piston moves back up the cylinder, the burnt gases are pushed out through the exhaust valve to the exhaust manifold, and the cycle is complete.

In a four-stroke engine, combustion and the resulting power stroke occur only once every two revolutions of the

crankshaft. In a two-stroke engine, combustion occurs every revolution of the crankshaft. Two-stroke engines eliminate the intake and exhaust strokes, leaving only compression and power strokes. This is due to the fact that two-stroke engines do not use intake and exhaust valves. Instead, they have intake and exhaust ports in the sides of the cylinder walls. With a two-stroke engine, as the piston approaches the bottom of the power stroke, it uncovers exhaust ports in the wall of the cylinder. The high pressure combustion gases blow into the exhaust manifold. As the piston gets closer to the bottom of the power stroke, the intake ports are uncovered, and fresh mixture of air and fuel are forced into the cylinder while the exhaust ports are still open. Exhaust gas is "scavenged" or forced into the exhaust by the pressure of the incoming charge of fresh air and fuel. In the process, however, some mixing between the exhaust gas and the fresh charge of air and fuel takes place, so that some of the fresh charge is also emitted in the exhaust. Losing part of the fuel out of the exhaust during scavenging causes very high hydrocarbon emission characteristics of two-stroke engines. The other major reason for high HC emissions from two-stroke engines is their tendency to misfire under low-load conditions due to greater combustion instability.

2. Applicability of Small SI Regulations

In our regulations for Small SI engines, we established criteria, such as rated engine speed at or above 5,000 rpm and the use of a speed governor, that excluded engines used in certain types of recreational vehicles (see 40 CFR § 90.1(b)(5)). Engines used in some other types of recreational vehicles may be covered by the Small SI standards, depending on the characteristics of the engines. For example, lawnmower-type engines used in go carts would typically be covered by the Small SI standards because they don't operate above 5,000 rpm. Similarly, engines used in golf carts are also included in the Small SI program. As discussed above, we are proposing to revise the Small SI regulations to include all recreational engines except those in off-highway motorcycles, ATVs, snowmobiles, and hobby engines. We are proposing to remove the 5,000 rpm and speed governor criteria from the applicability provisions of the Small SI regulations.

There may, however, be instances where an ATV, off-road motorcycle, or snowmobile manufacturer currently uses a certified small utility engine in their vehicle, and could be required to recertify that engine to the recreational

vehicle standards in the future. Relatively slow-moving amphibious ATVs would be one example where certified small utility engines may be used. We request comment on whether or not we should allow off-road motorcycles, ATVs, and snowmobiles to be certified to the Small SI standards in cases where a manufacturer has chosen to use a certified small utility engine. We also request comment on retaining the 5,000-rpm rated speed criteria for determining the applicability of the Small SI standards for snowmobiles, ATVs, and off-road motorcycles. Further, we request comment and information on any vehicles that currently have an engine certified to Small SI standards which would be required to certify to the recreational vehicle standards due to this regulatory change.

3. Hobby Engines

The Small SI rule categorized SI engines used in model cars, boats, and airplanes as recreational engines and exempted them from the Small SI program.¹⁴² We continue to believe that it would be inappropriate to include hobby engines in the Small SI program because of significant engine design and use differences. At this time, we also believe that hobby engines are substantially different than engines used in recreational vehicles and, as discussed below, we are not proposing to include SI hobby engines in this proposal.

There are about 8,000 spark-ignition engines sold per year for use in scale-model aircraft, cars, and boats.¹⁴³ This is a very small subsection of the overall model engine market, most of which are glow-plug engines that run on a mix of castor oil, methyl alcohol, and nitro methane.¹⁴⁴ A typical SI hobby engine is approximately 25 cc with a horsepower rating of about 1–3 hp, though larger engines are available. These SI engines are specialty products sold in very low volumes, usually not more than a few hundred units per engine line annually. Many of the engines are used in model airplanes, but they are also used in other types of models such as cars and boats. These engines, especially the larger

¹⁴² 65 FR 24929, April 25, 2000.

¹⁴³ Comments submitted by Hobbico on behalf of Great Plains Model Distributors and Radio Control Hobby Trade Association, February 5, 2001, Docket A-2000-01, document II-D-58.

¹⁴⁴ Glow plug hobby engines are considered compression ignition engines (diesel) because they lack a spark ignition system and throttle (see definition of compression ignition, 40 CFR § 89.2). The nonroad diesel engine regulations (40 CFR § 89.2) do not apply to hobby engines and therefore these engines are unregulated.

displacement models, are frequently used in competitive events by more experienced operators. The racing engines sometimes run on methanol instead of gasoline. In addition, the engines are usually installed and adjusted by the hobbyist who selects an engine that best fits the particular model being constructed.

The average annual hours of operation has been estimated to be about 12.2 hours per year.¹⁴⁵ The usage rate is very low compared to other recreational or utility engine applications due to the nature of their use. Much of the hobby revolves around building the model and preparing the model for operation. The engine and model must be adjusted, maintained, and repaired between uses.

SI model engines are highly specialized and differ significantly in design compared to engines used in other recreational or utility engine applications. While some of the basic components such as pistons may be similar, the materials, airflow, cooling, and fuel delivery systems are considerably different.^{146 147} Some SI model engines are scale replicas of multi-cylinder aircraft or automobile engines and are fundamentally different than SI engines used in other applications. Model-engine manufacturers often select lighter-weight materials and simplified designs to keep engine weight down, often at the expense of engine longevity. Hobby engines use special ignition systems designed specifically for the application to be lighter than those used in other applications. To save weight, hobby engines typically lack pull starters that are found on other engines. Hobby engines must be started by spinning the propeller. In addition, the models themselves vary significantly in their design, introducing packaging issues for engine manufacturers.

We are not proposing to include SI hobby engines in the recreational vehicles program at this time. The engines differ significantly from the recreational engines included in the proposal in their design and use, as noted above. Emission-control strategies envisioned for other recreational vehicles may not be well suited for hobby engines because of their design,

weight constraints, and packaging limitations. Approaches such as using a 4-stroke engine, a catalyst, or fuel injection all would involve increases in weight, which would be particularly problematic for model airplanes. The feasibility of these approaches for these engines is questionable. Reducing emissions, even if feasible, would likely involve fundamental engine redesign and substantial R&D efforts. The costs of achieving emission reductions are likely to be much higher per engine than for other recreational applications because the R&D costs would be spread over very low sales volumes. The cost of fundamentally redesigning the engines could double the cost of some engines.

By contrast, because of their very low sales volumes, annual usage rates, and relatively short engine life cycle, SI hobby engine emission contributions are extremely small compared to recreational vehicles. The emission reductions possible from regulating such engines would be minuscule (we estimate that SI hobby engines as a whole account for less than 30 tons of HC nationally per year, much less than 0.01% of Mobile Source HC emissions).¹⁴⁸ Thus, the cost per ton associated with regulating such engines would be well above any regulations previously adopted under the mobile source program (we estimate potential cost per ton for HC to over \$200,000 per ton compared to less than \$2,500 per ton for most other mobile source programs).

In addition, hobby engines differ significantly in their in-use operating characteristics compared to small utility engines and other recreational vehicle engines. It is unclear if the test procedures developed and used for other types of SI engine applications would be sufficiently representative for hobby engines. We are not aware of any efforts to develop an emission test cycle or conduct any emission testing of these engines. In addition, because installing, optimizing, maintaining, and repairing the engines are as much a part of the hobby as operating the engine, emission standards could fundamentally alter the hobby itself. Engines with emission-control systems would be more complex and the operator would need to be careful not to make changes that would cause the engine to exceed emission standards.

For all the above reasons, we do not have adequate information and are not able to propose emission standards and

test procedures for SI hobby engines at this time. We request comment on the above points, including feasibility, cost, and benefits associated with potential control technologies for these engines. We also request comment on any other information or unique characteristics of hobby engines that should be taken into consideration.

4. Competition Off-Highway Motorcycles

Currently, a large portion of off-highway motorcycles are designed as competition/racing motorcycles. These models often represent a manufacturer's high-performance offerings in the off-highway market. Most such motorcycles are of the motocross variety, although some high performance enduro models are marketed for competition use.^{149 150} These high-performance motorcycles are largely powered by 2-stroke engines, though some 4-stroke models have been introduced in recent years.

Competition events for motocross motorcycles mostly involve closed-course or track racing. Other types of off-highway motorcycles are usually marketed for trail or open-area use. When used for competition, these models are likely to be involved in point-to-point competition events over trails or stretches of open land. There are also specialized off-highway motorcycles that are designed for competitions such as ice racing, drag racing, and observed trials competition. A few races involve professional manufacturer-sponsored racing teams. Amateur competition events for off-highway motorcycles are also held frequently in many areas of the U.S.

Clean Air Act subsections 216 (10) and (11) exclude engines and vehicles "used solely for competition" from nonroad engine and nonroad vehicle regulations. In our previous nonroad

¹⁴⁹ A motocross bike is typically a high performance off-highway motorcycle that is designed to be operated in motocross competition. Motocross competition is defined as a circuit race around an off-highway closed-course. The course contains numerous jumps, hills, flat sections, and bermed or banked turns. The course surface usually consists of dirt, gravel, sand, and mud. Motocross bikes are designed to be very light for quick handling and easy maneuverability. They also come with large knobby tires for traction, high fenders to protect the rider from flying dirt and rocks, aggressive suspension systems that allow the bike to absorb large amounts of shock, and are powered by high performance engines. They are not equipped with lights.

¹⁵⁰ An enduro bike is very similar in design and appearance to a motocross bike. The primary difference is that enduros are equipped with lights and have slightly different engine performance that is more geared towards a broader variety of operation than a motocross bike. An enduro bike needs to be able to cruise at high speeds as well as operate through tight woods or deep mud.

¹⁴⁵ Comments submitted by Hobbico on behalf of Great Plains Model Distributors and Radio Control Hobby Trade Association, February 5, 2001, Docket A-2000-01, document II-D-58.

¹⁴⁶ E-mail from Carl Maroney of the Academy of Model Aeronautics to Christopher Lieske, of EPA, June 4, 2001, Docket A-2000-01, document II-G-144.

¹⁴⁷ Comments submitted by Hobbico on Behalf of Great Plains Model Distributors and Radio Control Hobby Trade Association, February 5, 2001, Docket A-2000-01, document II-D-58.

¹⁴⁸ For further information on the feasibility, emission inventories, and costs, see "Analysis of Spark Ignition Hobby Engines", Memorandum from Chris Lieske to Docket A-2000-01, document II-G-144.

engine emission-control programs, we have generally defined the term as follows:

Used solely for competition means exhibiting features that are not easily removed and that would render its use other than in competition unsafe, impractical, or highly unlikely.

If retained for the recreational vehicles program, the above definition may be useful for identifying certain models that are clearly used only for competition. For example, there are motorcycles identified as "observed trials" motorcycles which are designed without a standard seat because the rider does not sit down during competition. This feature would make recreational use unlikely.)

Most motorcycles marketed for competition do not appear to have obvious physical characteristics that constrain their use to competition. Upon closer inspection, however, there are several features and characteristics for many competition motorcycles that would make recreational use unlikely. For example, motocross bikes are not equipped with lights or a spark arrester, which prohibits them from legally operating on public lands (e.g., roads, parks, state land, federal land, etc.).¹⁵¹ Vehicle performance of modern motocross bikes are so advanced (e.g., extremely high power-to-weight ratios and advanced suspension systems) that it is highly unlikely that these machines would be used for recreational purposes. In addition, motocross and other competition off-highway motorcycles typically do not come with a warranty, which would further deter the purchase and use of competition bikes for recreational operation.¹⁵² We believe these features should be sufficient in distinguishing competition motorcycles from recreational motorcycles. We are specifically proposing the following features as indicative of motorcycles used solely for competition: absence of a headlight or other lights; the absence of a spark arrester; suspension travel greater than 10 inches; and an engine displacement greater than 50 cc.

Vehicles not meeting the applicable criteria listed above would be excluded only in cases where the manufacturer has clear and convincing evidence that

the vehicles for which the exemption is being sought will be used solely for competition. Examples of this type of evidence could be technical rationale explaining the differences between a competition and non-competition motorcycle, marketing and/or sales information indicating the intent of the motorcycle for competition purposes, or survey data from users indicating the competitive nature of the motorcycle.

Although there are several features that distinguish competition motorcycles from recreational motorcycles, several parties have commented that they believe motorcycles designed for competition use may be used for recreational purposes, rather than solely for competition. This is of particular concern because competition motorcycles represent about 29 percent of total off-highway motorcycle sales or approximately 43,000 units per year. However, a study on the characterization of off-highway motorcycle usage found that there are numerous—and increasingly popular—amateur off-highway motorcycle competitions across the country, especially motocross.¹⁵³ The estimated number of off-highway motorcycle competitors is as high as 80,000. Since it is very common for competitive riders to replace their machines every one to two years, the sale of 43,000 off-highway competition motorcycles appears to be a reasonable number, considering the number of competitive participants. We are therefore confident that, although we are proposing to exclude a high percentage of off-highway motorcycles as being competition machines, this definition is appropriate because a high percentage of these motorcycles are in fact used solely for competition.

We are very interested in receiving input on the proposed competition exclusion. We request comment on ways the program can be established to exclude motorcycles used solely for competition, consistent with the Act, without excluding vehicles that are also used for other purposes. We specifically request comment on the identifying characteristics of competition vehicles in § 1051.620 of the proposed regulations. Ideally, the program can be established in a way that provides reasonable certainty at certification. However, approaches could include reasonable measures at time of sale or in-use that would ensure that the

competition exclusion is applied appropriately.

C. Proposed Standards

1. What Are the Proposed Standards and Compliance Dates?

a. *Off-highway Motorcycles and ATVs.* We are proposing HC plus NO_x and CO standards for off-highway motorcycles and ATVs. We expect the largest benefit to come from reducing HC emissions from two-stroke engines. Two-stroke engines have very high HC emission levels. Baseline NO_x levels are relatively low for engines used in these applications and therefore NO_x standards serve only to cap NO_x emissions for these engines. Comparable CO reductions can be expected from both 2-stroke and 4-stroke engines, as CO levels are similar for the two engine types. We are also proposing averaging, banking and trading provisions for off-highway motorcycles and ATVs, as discussed below.

2006 Standards. In the current off-highway motorcycle and ATV market, consumers can choose between two-stroke and four-stroke models in most sizes and categories. Each engine type offers unique performance characteristics. Some manufacturers specialize in two-stroke or four-stroke models, while others offer a mix of models. The HC standard is likely to be a primary determining factor for what technology manufacturers choose to employ to meet emission standards overall. HC emissions can be reduced substantially by switching from two-stroke to four-stroke engines. Four-stroke engines are very common in off-highway motorcycle and ATV applications. Eighty percent of all ATVs sold are four-stroke. In addition, approximately 55 percent of non-competition off-highway motorcycles are four-stroke. Certification results from California ARB's emission-control program for off-highway motorcycles and ATVs, combined with our own baseline emission testing, provides ample data on the emission-control capability of four-stroke engines in off-highway motorcycle and ATV applications. Off-highway motorcycles certified to California ARB standards for the 2000 model year have HC certification levels ranging from 0.4 to 1.0 g/km. These motorcycles have engines ranging in size from 48 to 650 cc; none of these use catalysis.

In determining what standards to set for off-highway motorcycles and ATVs, we considered several approaches. One approach was to establish separate standards for two-stroke and four-stroke engines. This would take into

¹⁵¹ A spark arrester is a device located in the end of the tailpipe that catches carbon sparks coming from the engine before they get out of the exhaust system. This is important when a bike is used off-highway, where hot carbon sparks falling in grassy or wooded areas could result in fires.

¹⁵² Most manufacturers of motocross racing motorcycles do not offer a warranty. Some manufacturers do, however, offer very limited (1 to 3 months) warranties under special conditions.

¹⁵³ Characterization of Off-Road Motorcycle, ICF Consulting, September 2001, A-2000-1 document II-A-81.

consideration the fact that it could be expensive and difficult for two-stroke engines to meet the same emission levels as four-stroke engines. The problem with this approach is that two-stroke engines emit up to 25 times more HC emissions than four-stroke engines. Four stroke engines are currently being used on most, if not all, of the different subclasses of ATVs and off-highway motorcycles that we would be regulating, and we believe they can be used on all such subclasses. We are concerned that setting lesser standards for two-stroke engines could possibly result in the increase of two-stroke engine usage at the expense of four-stroke engines, which would result in a greater level of emissions and could miss the opportunity for a more appropriate and cost-effective standard. As a result, we proposing an approach that would require a single set of off-highway motorcycle and ATV standards for all engine types, similar to California ARB. We believe that this approach is consistent with our statutory requirement to propose standards that achieve the greatest emission reduction achievable, considering cost, noise, and safety factors. We ask for comment on this proposed approach and the rationale underlying this approach.

In 1994, California ARB adopted emission standards for off-highway motorcycles and ATVs. At the time, these standards were stringent enough that manufacturers were unable to provide performance-oriented off-highway motorcycles and ATVs that met the standards. As a result, ARB allowed manufacturers to sell non-compliant off-highway motorcycles and ATVs, resulting in approximately a third of the off-highway motorcycles and ATVs sold being compliant with the standards. Four-stroke engine technology has advanced considerably since the ARB regulations went into effect. Manufacturers are now capable of offering four-stroke engines that provide excellent performance. However, this performance can be achieved only as long as manufacturers are allowed to operate four-stroke engines with a slightly rich air and fuel mixture, which can result in somewhat higher HC and CO emissions. However, the HC emissions from four-stroke engines even when they operate rich are significantly lower than those from two-stroke engines. The market appears to be shifting to four-stroke technology.

As discussed above in Section # B.1.4, the CAA requires us to exempt from emission standards off-highway motorcycles and ATVs used for competition. We expect several competition off-highway motorcycle

models, most equipped with two-stroke engines, to continue to be available. We are concerned that setting standards as stringent as ARB's would result in a performance penalty for four-strokes which could encourage consumers who want performance-oriented off-highway motorcycles to purchase competition vehicles in lieu of purchasing compliant machines that don't provide the desired performance. That is why we are proposing emission standards that are slightly less stringent than the California ARB. We believe that our proposed emission standards would allow the continued advancement of four-stroke technology and are a good compromise between available emission-control technology, cost, and vehicle performance.

We are proposing exhaust emission standards for off-highway motorcycles and ATVs to take effect in the 2006 model year. We would allow a short phase-in of 50-percent implementation in the 2006 model year with full implementation in 2007. These standards apply to testing with the highway motorcycle Federal Test Procedure (FTP) test cycle. For HC+NO_x emissions, the standard is 2.0 g/km (3.2 g/mi). For CO emissions, the standard is 25.0 g/km (40.5 g/mi). These emission standards would allow us to set near-term requirements to introduce the low-emission technologies for substantial emission reductions with minimal lead time. We expect manufacturers to meet these standards using four-stroke engines with some low-level modifications to fuel-system calibrations. These systems would be similar to those used for many years in highway applications, but not necessarily with the same degree of sophistication.

We considered proposing several alternative sets of standards. The first alternative considered was to set the HC+NO_x standard at a level higher than 2.0 g/km, since this standard could prove to be difficult for a two-stroke engine to achieve. However, since two-stroke engines emit so much higher levels of HC than four-stroke engines, and HC emission-control technology for two-stroke engines is more expensive and complicated, we would expect that such a standard would have to be considerably higher than 2.0 g/km, perhaps in the range of 10 to 12 g/km. Even a standard this high would still likely require secondary air injection and a catalytic converter for most two-stroke engines to comply. We believe that the concerns over high catalyst temperatures and potential negative impacts on engine performance would most likely result in manufacturers

choosing to convert two-stroke applications to four-stroke, especially since four-stroke engines are already so prevalent in off-highway motorcycle and ATV applications. In addition, we believe that the cost differential between air injection and a catalyst for a two-stroke engine and using a four-stroke engine would be minimal. We request comment on such a standard, and on the costs and emissions benefits associated with that approach. Commenters should include a recommendation for the level of the standard.

We also considered setting the HC+NO_x standard at a level lower than 2.0 g/km, since it is possible to use a catalyst on a four-stroke engine and achieve lower emission levels. We decided that for off-highway motorcycles, the technologies necessary to meet emission standards lower than our proposed level of 2.0 g/km for HC+NO_x could be prohibitive due to several factors such as limited catalyst locations that are considered safe to the operator and potential negative engine performance impacts (see our discussion on proposed 2009 standards for more detail). These issues are not as important for ATVs. However, it would be difficult to implement them by the 2006 model year since 20 percent of the fleet is still two-stroke and manufacturers would need time to convert their fleet to four-stroke. Therefore, we are not proposing a HC+NO_x standard lower than 2.0 g/km for off-highway motorcycles and are instead proposing a second phase of standards for ATVs in the 2009 model year. We are asking for comment on this aspect of the proposal, and on such a standard.

Some youth-oriented off-highway motorcycles and ATVs with small engine displacements have engine governors limiting vehicle speeds. In the case of ATVs, the Consumer Product Safety Commission (CPSC) limit youth ATVs with engine displacements between 50 and 100 cc to a top speed of 35 mph. Similarly, ATVs with engine displacements of 50 cc and less are limited to a top speed of 15 mph. Many small off-highway motorcycles use the same governors. For vehicles with a displacement greater than 50 cc, we believe the FTP is an appropriate test cycle because of the transient capability of these vehicles. However, for the vehicles with engine displacements of 50 cc and less, the governed top speed of 15 mph restricts the operation of these vehicles to either idle or the governed wide-open throttle setting, similar to a lawn mowers. It may not make sense to require these small-displacement vehicles to be tested over

the FTP. Therefore, we propose that off-highway motorcycles and ATVs with an engine displacement of 50 cc or less have the option to certify to the proposed off-highway motorcycle and ATV standards discussed above or to meet the Phase 1 Small SI emission standards for non-handheld Class I engines. We request comment on this option.

ATV manufacturers have requested that we allow them the option of certifying ATVs to the same optional exhaust emission standards as allowed by California ARB. California allows ATVs to be optionally tested using the

California ARB utility engine test cycle (SAE J1088) and procedures. In California, manufacturers may use the J1088 engine test cycle to meet the California Small Off-Road Engine emission standards. Manufacturers were required to submit some emission data from the various modes of the J1088 test cycles to show that emissions from these modes were comparable to FTP emissions. California allowed this option because the goal of their program was to encourage the use of four-stroke engine technology in ATVs. The lawn and garden test cycle and standards were considered stringent enough to

encourage manufacturers to switch from two-stroke engines to four-stroke engines. We continue to be concerned that the J1088 test cycle doesn't represent actual ATV operation, but for our Phase 1 standards, our goal is to encourage manufacturers to switch from two-stroke to four-stroke engine technology. Therefore, to facilitate this phase-in we are proposing here that manufacturers may optionally certify ATVs using the California utility cycle and standards as shown in Table VI.C-1 instead of the FTP standards of 2.0 g/km HC+NO_x and 25 g/km CO discussed above.

TABLE VI.C-1.—CALIFORNIA UTILITY ENGINE EMISSION STANDARDS

Engine displacement	HC+NO _x	CO
Less than 225 cc	12.0 g/hp-hr (16.1 g/kW-hr)	300 g/hp-hr (400 g/kW-hr)
Greater than 225 cc	10.0 g/hp-hr (13.4 g/kW-hr)	300 g/hp-hr (400 g/kW-hr)

Some manufacturers have expressed concern about the stringency of the proposed standards for some small displacement (e.g., less than 80 cc) youth off-highway motorcycles and ATVs. They have also stated that some of these small vehicles may have a difficult time operating over the FTP cycle. Therefore, we request comment on the ability of small displacement youth off-highway motorcycles and ATVs to operate over the FTP test cycle and meet our proposed emission standards.

2009 Standards. As stated above, we expect manufacturers to meet the proposed 2006 standards by using four-stroke engines with minor modifications to fuel calibrations. Several technologies are available to further reduce emissions from off-highway motorcycles and ATVs. The most likely choices would be the use of electronic fuel injection, secondary air injection into the exhaust system, and catalytic converters. Although these technologies would be capable of further emission reductions, there are potential concerns with applying each of these technologies to off-highway motorcycles. The complexity and increased cost of electronic fuel injection makes it problematic for off-highway motorcycle applications. Off-highway motorcycle manufacturers and enthusiasts have expressed concern over possible leg burns resulting from catalysts since off-highway motorcycles have exhaust systems that run higher up on the frame. They are concerned that if a rider were to fall over with the motorcycle on top of them, the hot catalyst could burn the

rider. Catalysts and secondary air also have the potential to adversely affect engine performance. Since motorcycle performance is paramount for off-highway motorcycles, any technologies that could impact performance or pose a perceived safety threat could encourage consumers to purchase high-performance competition motorcycles rather than recreational motorcycles. For ATVs, however, the design of the vehicle is more receptive to placing a catalyst on the exhaust. Since the engine is further inside the vehicle with numerous plastic fairings around the engine, the operator's legs are far away and shielded from the exhaust pipe. ATV engines also tend to have lower power output than off-highway motorcycle engines, making the use of secondary air or catalysts more tolerable.

Since ATV design and use are more conducive to these more advanced emission-control technologies than off-highway motorcycles, we believe it is appropriate to pursue more advanced emission-control technologies for ATVs. We also note that the usage rate and population of ATVs is growing substantially compared to off-highway motorcycles. We expect that, with additional time to optimize designs to better control emissions, manufacturers of ATVs should be able to meet more stringent emission standards. Starting with the 2009 model year for ATVs only, we propose to apply emission standards of 1.0 g/km (1.6 g/mi) for HC+NO_x emissions and 25 g/km (40.5 g/mi) for CO emissions. As with the Phase 1 standards, we are proposing a

two-year phase-in, with 50 percent of models complying in 2009 and all models complying in 2010.

We are proposing that ATVs would be required to meet a 1.0 g/km HC+NO_x standard because we believe it can be met by using four-stroke engines with secondary air injection. Secondary air injection is a common HC emission-control technology used on highway motorcycles. Its use is more transparent to the ATV operator than a catalyst and is a relatively inexpensive means of achieving significant emission reductions. Depending on several variables, some models may have a more difficult time meeting the Phase 2 standards without the use of a catalyst. Therefore, while we expect ATV manufacturers to meet the Phase 2 standards for many of their models using four-stroke engines with air injection, they may also choose to use a combination of several possible emission-control technologies, including base-engine modifications, improved fuel-system calibrations, electronic fuel injection, and catalytic converters. Off-highway motorcycles would continue to meet the 2006 standards described above.

Several ATV manufacturers have expressed concern over being able to meet tighter HC+NO_x standards while still meeting the proposed CO standards. They have asked us to increase or even eliminate the CO standard for Phase 2. Therefore, we request comment on whether the CO standard for Phase 2 should be increased from the proposed level of 25 g/km.

We are proposing to discontinue the provision allowing manufacturers of ATVs the option to certify to the California utility engine test procedure and emission standards for Phase 2 ATVs. We propose to require that manufacturers test all Phase 2 ATVs with the highway motorcycle FTP test procedure. Manufacturers have expressed concerns over the cost of building emission test cells equipped with chassis dynamometers and the representativeness of the FTP relative to in-use ATV operation. They argue that the FTP is no more representative of ATV operation than the steady-state J1088 engine test cycle. While it may be true that the chassis-based FTP test cycle is not fully representative of in-use ATV operation, there is currently very limited data addressing this. California is in the process of gathering in-use operating data for ATVs. Preliminary examination of that data is too inconclusive to determine whether the FTP is adequately representative of in-use ATV operation. It does indicate that the five steady-state modes captured in the J1088 cycle are not adequately representative of ATV operation. It has long been known that ATVs experience considerable transient operation, similar to automobiles and motorcycles. The California data support this view. The chassis-based FTP used for certification of motorcycles, while possibly not ideal for ATVs, therefore appears to be more representative of ATV operation than the J1088 test cycle. With this in mind, we request comment on the possibility of developing an alternate test cycle and procedure for ATVs that would be more representative of typical ATV operation. An alternate test cycle could be chassis-based or engine-based, but would need to incorporate transient operation. If an acceptable alternative cycle is developed, we would reassess whether our proposed emission test procedure for Phase 2 would still be appropriate.

As with the 2006 proposed emission standards, we request comment on the ability of small-displacement ATVs to operate over the FTP test cycle and meet our proposed emission standards.

We request comment on whether a Phase 2 standard for ATVs is appropriate, and on the proposed level of the Phase 2 standard. We also request comment on technology, cost, and safety issues associated with a possible second phase of off-highway motorcycle emission standards.

b. Snowmobiles. We are proposing CO and HC standards for snowmobiles. We are requesting comment on whether we should set standards for PM and NO_x emissions from snowmobiles, and what

appropriate levels would be. As previously discussed, snowmobile engines are almost exclusively two-stroke. As such, they emit high levels of HC and PM. However, we are not proposing PM standards at this time for snowmobiles, because limits on HC emissions will serve to simultaneously limit PM. We considered adding a regulatory requirement for manufacturers to measure and report PM emission rates along with their other certification data, but we did not include such a requirement in the proposed regulations. We are most concerned about the cost to manufacturers if they were required to build PM measurement capabilities into all of their test facilities. We request comment on the need for PM emission data, and whether it is necessary to put a requirement in the regulations.

We are not proposing NO_x standards for snowmobiles because they are primarily operated during the winter months when ozone is not a concern. However, we are proposing that manufacturers measure NO_x emission rates and report them in their applications for certification. We believe that this would provide necessary information, but would not be a significant burden for manufacturers. We request comment on this element of the proposal.

2006 Standards. We are proposing standards for snowmobiles to take effect for all models starting in the 2006 model year: 275 g/kW-hr (205 g/hp-hr) for CO and 100 g/kW-hr (75 g/hp-hr) for HC. As discussed below, we are proposing an emission-credit program with these standards. Thus, we expect manufacturers to meet these proposed standards using a variety of technologies and strategies across their product lines. Snowmobiles pose some unique problems for implementing emission-control technologies and strategies. Snowmobiles are very sensitive to weight, power, and packaging constraints. Current snowmobile designs have very high power-to-weight ratios, allowing for excellent performance. Manufacturers have stated that if snowmobile performance declines, customers will either stop purchasing snowmobiles, or will replace original equipment (e.g., emission-control technology) with uncertified aftermarket parts. The desire for low weight is perceived as a safety issue, since operators may have to drag their sleds out of deep snow. Styling, especially very low-profile hoods, has also become paramount among snowmobile enthusiasts. All these concerns mean that it may be initially more difficult for manufacturers to

develop a broad range of technologies capable of significant emission reductions. Some manufacturers may aggressively pursue clean carburetion and associated engine modifications and apply those uniformly across their entire product line. Others may choose to apply more advanced technologies such as direct or semi-direct injection to some of their more expensive, high-performance sleds and be less aggressive in pursuing emission reductions from their lower-priced offerings in order to optimize the fit of different technologies (and their associated costs) to the various product offerings. We also expect some manufacturers to offer some models featuring four-stroke engines.

We are proposing to require all snowmobiles to meet the proposed first phase of emission standards beginning with the 2006 model year. We request comment on options to ease the transition to the new standards, as described in Section VI.C.2.b.

Due to the unique performance requirements for snowmobiles, we believe our proposed 2006 standards would be challenging for manufacturers and would result in cleaner snowmobiles. While some advanced technologies such as two-stroke direct injection and four-stroke engines, would be found in some models, many models would still be equipped with two-stroke engines with relatively minor engine modifications resulting in minimum emission reductions, while some models may not even have any emission controls.

2010 Standards. We have had many discussions with manufacturers about emission control technologies. We have also closely examined the certification emission results of outboard boat engines and personal watercraft (PWC) equipped with two-stroke direct injection and four-stroke engines. It is our belief that with sufficient lead time, manufacturers can successfully implement these technologies across a much broader range of their snowmobile fleet. Manufacturers have indicated to us that two-stroke engines equipped with direct fuel injection systems could reduce HC emissions by 70 to 75 percent and reduce CO emissions by 50 to 60 percent. Certification results for 1999 and 2000 model year outboard engines and PWC support the manufacturers' projections. In addition, two snowmobile manufacturers plan to sell a four-stroke model next year. These manufacturers indicated that their machines are capable of HC reductions in the 70 to 95 percent range, with CO reductions of 60 to 80 percent. Therefore, we believe that with

sufficient time it is feasible for snowmobile manufacturers to achieve a greater penetration of advanced emission control technologies throughout their fleets and reduce emissions further.

We are, therefore, proposing a second phase of average standards to take effect with the 2010 model year. The proposed 2010 average standards are 200 g/kW-hr (149 g/hp-hr) for CO and 75 g/kW-hr (56 g/hp-hr) for HC. These standards represent a 50% reduction in HC and CO emissions from the current average baseline levels. We believe that implementation in 2010 would provide sufficient time for advanced technologies to be more broadly available. We also believe that manufacturers will have had adequate time to make appropriate modifications to snowmobile designs (e.g., styling and packaging issues) so they can more broadly spread advanced emission-control technologies across their product lines. We expect these standards would be met through the application of direct injection two-stroke technology and, to a much lesser extent, four-stroke technology, to cover about half of overall production, with the remaining models utilizing clean carburetion and electronic fuel injection, along with the associated engine modifications. The actual mix of technologies used would be the manufacturers choice, but the data mentioned above gives us reason to believe that the basic technology exists to meet the standard based on a 50-percent reduction. We believe that the lead time provided to meet these standards is sufficient to overcome the technical hurdles discussed below in Section VI.F.2.

We request comment on our second phase of snowmobile standards. In particular, we are interested in comments on the level of the standards, our technical assessment and potential fleet mix projections, any safety, reliability, or performance considerations associated with adoption of four-stroke technology. We also request comment on the cost of adopting such standards and the effects on sales and consumer satisfaction. We are also interested in further information addressing the benefits associated with such a standard.

c. Noise Standards. The Noise Control Act (42 U.S.C. 4901 *et seq.*) authorizes EPA to establish noise emission standards for motorized equipment. Under this authority, we established noise emission standards for motorcycles and three-wheeled ATVs in 40 CFR Part 205 (45 FR 86708, December 31, 1980). These regulations

include voluntary "Low noise emission product standards" for motorcycles § CFR 205.152(c)).

Prior to proposal, we received public comments requesting that we consider setting new noise standards for recreational vehicles. Noise from these vehicles in public parks or other public lands can adversely impact other activities. However, at this time we do not have funding to pursue noise standards for nonroad equipment that does not have an existing noise requirement.

2. Are There Opportunities for Averaging, Emission Credits, or Other Flexibilities?

a. Averaging, Banking and Trading. Historically, voluntary emission-credit programs have allowed a manufacturer to certify one or more engine families at emission levels above the applicable emission standards, provided that the increased emissions are offset by one or more engine families certified below the applicable standards. With averaging alone, the average of all emissions for a particular manufacturer's production must be at or below that level of the applicable emission standards. We are proposing separate emission-credit programs for snowmobiles, off-highway motorcycles, and ATVs. We are proposing an emissions credit program for the optional Phase 1 ATV engine-based standards as well as the chassis-based standards. We request comment on whether or not averaging, banking, and trading adds value to the engine-based option considering the level of the standards being proposed.

In addition to the averaging program just described, the proposed emission-credit program contains banking and trading provisions, which allow manufacturers to generate emission credits and bank them for future use in their own averaging program or sell them to another entity. We are not proposing a credit life limit or credit discounting for these credits. Unlimited credit life and no discounting increases the incentive to introduce the clean technologies needed to gain credits. In order to generate credits, the average emissions level must be below the standard, so the credits would be the result of reductions in excess of those required by the standards.

We are seeking comment on whether or not a credit life limit (e.g., three years) is needed to ensure that manufacturers do not have the opportunity to, in effect, postpone the Phase 2 standards for several years for one or more vehicle families. Unlimited credit life has the potential to interfere with the timely and orderly phase-in of

future standards, especially if the manufacturer is able to bank large amounts of credits during intervening years. This is a concern here because the proposed level of the Phase 1 standards may provide considerable opportunity for credit generation for manufacturers that can market a significant number of relatively clean models early in the program. For example, some 4-stroke ATV models are likely to have emissions levels below the Phase 1 standards, allowing for considerable credit generation.

We also request comment on how this issue may differ for credits generated under Phase 2, where the affect on the next tier of standard is not a complicating issue. We would have the opportunity to consider and reassess such a provision if and when we were to propose a third phase of standards. In addition, we request comments on an alternative approach of not allowing credits generated in Phase 1 to be used in Phase 2.

For off-highway motorcycles and ATVs, we are proposing to allow averaging for the HC plus NO_x standard. Off-highway motorcycle and ATVs would be averaged separately to avoid providing an advantage in the market to companies that offer both types of products over those that produce only one type. In addition, there are differing degrees of stringency in the standards for ATVs and off-road motorcycles long-term and we do not want off-road motorcycle credits to dilute the effectiveness of the Phase 2 ATV standards. Also, ATVs certified to the chassis-based standards and engine-based standards would be considered separate averaging groups with no credit exchanges between the two. We are not allowing credit exchanges between engine and chassis-based testing because there is little, if any, correlation between the two test cycles. Without a strong correlation, it is not possible to establish an exchange rate between the two programs. We are not proposing a CO averaging, banking, and trading program because the level of the standard does not appear to add substantial technological challenge to the program, especially for Phase 1. The usefulness of CO averaging may not warrant the additional complexity of an averaging program. We request comment on the need for a CO ABT program for Phase 2, and on the proposed approach for separate ABT programs.

For the Phase 2 ATV standards, we are proposing a maximum allowable Family Emission Limit (FEL) of 2.0 g/km HC plus NO_x (the Phase 1 standard). In several other ABT programs, we have

established a cap at the previous emission standard to ensure a minimum level of control long term. We request comment on whether or not an FEL limit is appropriate to ensure a minimum level of control for all models. Please see the discussion on this issue in the recreational marine diesel section of this document for more information. We request comment specifically on how this approach could affect product offerings and consumer choice. We also request comment on the level of the emissions cap and alternative levels.

For snowmobiles, we are proposing an emission-credit program for both CO and HC. We are proposing that maximum allowable Family Emission Limits be set at the current average baseline emission levels of 400 g/kW-hr (300 g/hp-hr) CO and 150 g/kW-hr (110 g/hp-hr) HC. This cap ensure a minimum level of control for each snowmobile certified under the program. We believe that this is appropriate due to the potential for personal exposure to very high levels of emissions as well as the potential for high levels of emissions in areas where several snowmobiles are operated in a group. We request comment on the level of the cap for Phase 1. We also request comment on whether it would be appropriate to set more stringent maximum allowable Family Emission Limits for 2010 and later model year snowmobiles, for example, at the levels of the 2006 standards. We are interested in comment on any potential impacts a more stringent cap may have on the variety of products available to the consumer. We are proposing that manufacturers may not both generate and use credits for the different pollutants within a given engine family.

We request comment on all aspect of the proposed ABT program, including on the administrative and liability provisions provided in the proposed regulatory text.

b. Early Credits and Alternative Phase-in Schedule. We are interested in but are not specifically proposing opportunities for early credits, and other flexibilities, as discussed below. We are proposing no phase-in schedule for snowmobiles and a two-year phase-in schedule for off-road motorcycles and ATVs. While we believe adequate lead-time is provided to meet the proposed standards, we recognize that some flexibility in timing could help manufacturers transition their full product line to new standards. We are requesting comment on three specific approaches to providing additional flexibility to manufacturers, described below. We are interested in how these provisions could be established in a way

that would be environmentally neutral and yet also provide manufacturers with flexibility.

We are not proposing provisions for early generation of credits, because we have not been able to resolve our concerns about substantial windfall credits (credits generated relatively easily from baseline engines). For example, there could be substantial credits available for snowmobile manufacturers that have developed four-stroke snowmobile models. Also, some baseline ATV and off-highway motorcycles could also have relatively low emission levels. However, as discussed below, we are seeking comment on approaches for early credits that could address concerns regarding windfall credits.

Under an early emission-credit approach, manufacturers could earn credits by reducing emissions earlier than required, then use those credits after the program begins. Because there is a wide variation in baseline emission levels, we would need to consider taking steps to ensure that manufacturers do not generate windfall credits. One way to address the concern for windfall credits would be to allow credits only for emission reductions below the proposed standards and limit the life of those credits to three years. We believe this approach may ensure that manufacturers would generate credits only through the use of cleaner technologies. It also ensures that the credits would not adversely impact the long-term effectiveness of the program. This approach would provide incentive for manufacturers to pull ahead significantly cleaner technologies. We request comment on early credits for CO and HC emissions for snowmobiles and HC+NO_x emissions for off-road motorcycles and ATVs, and a requirement that the credit-generating engines also meet the standards for the other regulated pollutants.

Under the second approach, an alternative phase-in schedule, manufacturers would be provided with a one-for-one credit in the phase-in schedule for selling complying recreational vehicles prior to the start of the program. Manufacturers who pull ahead a percentage of their product line would get a phase-in credit to be used during the initial years of the program (i.e., 2008 and earlier). For example, if a snowmobile manufacturer phased in 10 percent of their product line early in 2005, they could then phase-in 90 percent, rather than 100 percent, of their product line in 2006. We would expect this to be a transitional provision limited to the first few years of the program (all vehicles would need to be

certified by 2008). We could implement the program through a calculation based on the sum of the phase-in percentages over a series of model years. For example, for snowmobiles, the sum of the phase-in percentages over model years 2004–2008 could be required to be equal to or greater than 300% (100% each for 2006, 2007, and 2008). For off-road motorcycles and ATVs, the calculation would take into account the 50/100 percent phase-in schedule for 2006/2007, with a requirement that the sum of the phase-in be equal to or greater than 250 percent. For example, an alternative phase-in schedule of 25/50/75/100 percent in 2005 through 2008 would be acceptable. The calculation of the percentage phase-in would be the same as that for the standard program.

An alternative to early banking or a revised phase-in would be "family-banking." Under the "family-banking" concept, we would allow manufacturers to certify an engine family early. For each year of certifying an engine family early, the manufacturer would be able to delay certification of a smaller engine family by one year. This would be based on the actual sales of the early family and the projected sales volumes of the late family; this would require no calculation or accounting of emission credits.

We request comment on the above approaches or any other approach that would help manufacturers bring the product lines into compliance to the proposed standards without compromising emissions reductions (see § 1048.145 of the proposed regulations). We request comment on the merits of the various approaches noted above, and others commenters may wish to suggest. We request that commenters provide detailed comments on how the approaches should be set up, enhanced, or constrained to ensure that they serve their purpose without diminishing the overall effectiveness of the standards.

3. Is EPA Proposing Voluntary Low-Emission Standards for These Engines?

We are proposing a Voluntary Low-Emission Standards program for recreational vehicles. The purpose of this program is two-fold; first, to encourage new emission-control technology and second, to aid the consumer in choosing clean technologies. At the point of purchase, manufacturers could add a tag designating qualifying vehicles to inform consumers which engines are certified by this program and listing the certification levels of the vehicles. In addition, we are suggesting that manufacturers provide information about the program in the vehicle

Owner's Manual. To qualify for this program, engines must meet the voluntary standards described below. Manufacturers choosing to sell engines with this designation may generate certification emission credits from these technologies.

The general purpose of the Voluntary Low-Emission Standards program is to provide incentives to manufacturers to produce clean products and thus create market choices for consumers to purchase these products.¹⁵⁴ We believe that EPA designation of clean technologies through this voluntary program can provide useful information to consumers. We request comment on the merits and design of the program and also on additional measures we can take to encourage this program and prohibit misuse.

We are proposing Voluntary Low-Emission Standards for off-highway motorcycles and ATVs of 0.8 g/km (1.3 g/mi) HC+NO_x and 12 g/km (24.3 g/mi) CO. These emission levels are consistent with the 2008 standards proposed by California ARB for highway motorcycles. We believe that off-highway motorcycles and ATVs could meet these voluntary standards by employing some of the same technologies manufacturers will use to meet the 2008 California emission standards for highway motorcycles. We request comment on the level of the standards and the need for lower voluntary standards for Phase 2 of the ATV program.

We are proposing Voluntary Low Emission Standards for snowmobiles of 200 g/kW-hr (149 g/hp-hr) for CO and 75 g/kW-hr (56 g/hp-hr) for HC through 2009 model year snowmobiles. These are the same levels as our proposed phase 2 standards. For the 2010 model year and later, the standards are 120 g/kW-hr (89 g/hp-hr) for CO and 45 g/kW-hr (34 g/hp-hr) for HC for any snowmobiles. We believe these voluntary standards could be met with either direct injection two-stroke, or four-stroke technology. Snowmobiles included in this program may generate credits for use in the proposed emission-credit program. We request comment on the level of the voluntary standards being proposed and whether we should consider more or less stringent voluntary standards for snowmobiles.

¹⁵⁴ The snowmobile industry (see docket item II-G-221) and a group of public health and environmental organizations (see docket item II-G-139) have both expressed their general support for labeling programs that can provide information on the environmental performance of various products to consumers.

4. What Durability Provisions Apply?

We are proposing several additional provisions to ensure that emission controls would be effective throughout the life of the vehicle. This section discusses these proposed provisions for recreational vehicles. More general certification and compliance provision, which would apply across the different vehicle categories in this proposal, are discussed in Sections III and VII, respectively.

a. How long would my engine have to comply? We propose to require manufacturers to produce off-highway motorcycle and ATV engines that comply over their full useful life, where useful life is the period that lasts either 5 years or until the vehicle accumulates 30,000 kilometers, whichever occurs first. We would consider this 30,000-kilometer value to be a minimum kilometer value for useful life, and would require manufacturers to comply for a longer period in those cases where they design their vehicles to be operated longer than 30,000 kilometers.

For snowmobiles, we are proposing a minimum useful life of 5 years or 300 hours of operation, whichever occurs first. We based these values on discussions with manufacturers regarding typical snowmobile life, and on emission-modeling data regarding typical snowmobile usage rates.¹⁵⁵

We request comment on the proposed useful life values. Any comments in support of a different useful life should include documentation of typical life and operation.

b. Would I have to warrant my engine's emission controls? We are proposing a design/defect warranty period of 3 years, with an hours or kilometers limit equal to half the useful life interval proposed above. During this time manufacturers would repair or replace free of charge emission-related components that fail. Because this warranty requirement applies only for emission-related components, manufacturers are not responsible for routine maintenance that is currently performed for uncontrolled engines (e.g., changing oil filters or carburetors).

c. How would I demonstrate emission durability during certification? For off-highway motorcycles and ATVs, we are proposing the same durability demonstration requirements that apply to highway motorcycles. This includes a requirement to run the engines long enough to test for exhaust emissions at the end of the useful life. This allows manufacturers to generate a

¹⁵⁵ EPA memorandum, "Emission Modeling for Recreational Vehicles," from Linc Wehrly to Docket A-98-01, November 13, 2000.

deterioration factor that helps ensure that the engines will continue to control emissions over a lifetime of operation.

d. What maintenance would be allowed during service accumulation? For vehicles certified to the proposed useful life, no emission-related maintenance would be allowed during service accumulation. The only maintenance that would be allowed is regularly scheduled maintenance unrelated to emissions that is technologically necessary. This could typically include changing engine oil, oil filter, fuel filter, and air filter.

5. Do These Standards Apply to Alternative-Fueled Engines?

These proposed standards apply to all spark-ignited recreational vehicles, without regard to the type of fuel used. However, because we are not aware of any alternative-fueled recreational vehicles sold into the U.S. market, we are not proposing extensive special provisions to address them at this time.

6. Is EPA Controlling Crankcase Emissions?

We are proposing to require that new off-highway motorcycles and ATVs be built to prevent crankcase emissions. This means that engines would no longer emit crankcase vapors directly to the atmosphere. The typical control strategy is to route the crankcase vapors back to the engine intake. This proposal is consistent with our previous regulation of crankcase emissions from such diverse sources as highway motorcycles, outboard and personal watercraft marine engines, locomotives, and passenger cars. We have data from California ARB showing that a performance-based four-stroke off-highway motorcycle experienced considerably higher tailpipe emission results when crankcase emissions were routed back into the intake of the engine, illustrating the potentially high levels of crankcase emissions that exist.¹⁵⁶ We are also proposing closed crankcases on new snowmobiles. This requirement is only relevant for four-stroke snowmobiles, however, since two-stroke engines, by virtue of their operation, have closed crankcases. Information on the costs and benefits of this action can be found in the Draft Regulatory Support Document.

D. Proposed Testing Requirements

1. What Duty Cycles Are Used To Measure Emissions?

Testing a vehicle or engine for emissions consists of exercising it over

¹⁵⁶ Memo to Docket from Linc Wehrly, dated September 10, 2001. (A-2000-1) document II-B-25.

a prescribed duty cycle of speeds and loads, typically using a chassis or engine dynamometer. The nature of the duty cycle used for determining compliance with emission standards during the certification process is critical in evaluating the likely emission performance of engines designed to those standards. Duty cycles must be relatively comparable to the way equipment is actually used because if they are not, then compliance with emission standards would not assure that emissions from the equipment are actually being reduced in use as intended.

a. Off-highway Motorcycles and ATVs. For off-highway motorcycles and ATVs, we propose that the current highway motorcycle test procedure be used for measuring emissions. The highway motorcycle test procedure is the same test procedure as used for light-duty vehicles (i.e., passenger cars and trucks) and is referred to as the Federal Test Procedure (FTP). The FTP for a particular class of engine or equipment is actually the aggregate of all of the emission tests that the engine or equipment must meet to be certified. However, the term FTP has also been used traditionally to refer to the exhaust emission test based on the Urban Dynamometer Driving Schedule (UDDS), also referred to as the LA4 (Los Angeles Driving Cycle #4). The UDDS is a chassis dynamometer driving cycle that consists of numerous "hills" which represent a driving event. Each hill includes accelerations, steady-state operation, and decelerations. There is an idle between each hill. The FTP consists of a cold start UDDS, a 10 minute soak, and a hot start. The emissions from these three separate events are collected into three unique bags. Each bag represents one of the events. Bag 1 represents cold transient operation, bag 2 represents cold stabilized operation, and bag 3 represents hot transient operation.

Highway motorcycles are divided into three classes based on engine displacement, with Class I (50 to 169 cc) being the smallest and Class III (280 cc and over) being the largest. The highway motorcycle regulations allow Class I motorcycles to be tested on a less severe UDDS cycle than the Class II and III

motorcycles. This is accomplished by reducing the acceleration and deceleration rates on some of the more aggressive "hills." We propose that this same class/cycle distinction be allowed for off-highway motorcycles and ATVs. In other words, off-highway motorcycles and ATVs with an engine displacement between at or below 169 cc would be tested over the FTP test cycle for Class I highway motorcycles. Off-highway motorcycles and ATVs with engine displacements greater than 169 cc would be tested over the FTP test cycle for Class II and Class III highway motorcycles. Some manufacturers have expressed concern over the ability of some small-displacement (e.g., less than 80 cc) youth off-highway motorcycles and ATVs to operate over the FTP. We request comment on the ability of these small-displacement vehicles to operate over the FTP test cycle. We also request comment on whether or not it would be appropriate to allow all ATVs to be certified using the Class I cycle.

Some manufacturers have noted that they do not currently have chassis-based test facilities capable of testing ATVs. Manufacturers have noted that requiring chassis-based testing for ATVs would require them to invest in additional testing facilities that can handle ATVs, since ATVs do not fit on the same roller(s) as motorcycles used in chassis testing. Some manufacturers also have stated that low-pressure tires on ATVs would not stand up to the rigors of a chassis dynamometer test. California provides manufacturers with the option of certifying ATVs using the engine-based, utility engine test procedure (SAE J1088), and most manufacturers use this option for certifying their ATVs. Manufacturers have facilities to chassis-test motorcycles and therefore California does not provide an engine-testing certification option for motorcycles.

We have tested numerous ATVs over the FTP and have found that several methods can be used to test ATVs on chassis dynamometers. The most practical method for testing an ATV on a motorcycle dynamometer is to disconnect one of the drive wheels and test with only one drive wheel in contact with the dynamometer. For chassis dynamometers set up to test light-duty vehicles, wheel spacers or a

wide axle can be utilized to make sure the drive wheels fit the width of the dynamometer. We have found that the low-pressure tires have withstood dynamometer testing without any problems.

We acknowledge that a chassis dynamometer could be very costly to purchase and difficult to put in place in the short run, especially for smaller manufacturers. Therefore, we are proposing that for the model years 2006 through 2009, ATV manufacturers would be allowed the option to certify using the J1088 engine test cycle per the California off-highway motorcycle and ATV program. After 2009, this option would end and the FTP would be the required test cycle. If an alternate transient test cycle (engine or chassis) correlates with the FTP or better represents in-use ATV operation, we would consider allowing manufacturers to use the alternative test cycle in place of the FTP.

b. Snowmobiles. We are proposing to adopt the snowmobile duty cycle developed by Southwest Research Institute (SwRI) in cooperation with the International Snowmobile Manufacturers Association (ISMA) for all snowmobile emission testing.¹⁵⁷ The test procedure consists of two main parts; the duty cycle that the snowmobile engine would operate over during testing and other testing protocols surrounding the measurement of emissions (sampling and analytical equipment, specification of test fuel, atmospheric conditions for testing, etc.). While the duty cycle we are proposing was developed specifically to reflect snowmobile operation, many of the testing protocols are well established in other EPA emission-control programs and have been simply adapted where appropriate for snowmobiles.

The snowmobile duty cycle was developed by instrumenting several snowmobiles and operating them in the field in a variety of typical riding styles, including aggressive (trail), moderate (trail), double (trail with operator and one passenger), freestyle (off-trail), and lake driving. A statistical analysis of the collected data produced the five mode steady-state test cycle is shown in Table VI.D-1.

TABLE VI.D-1.—PROPOSED SNOWMOBILE ENGINE TEST CYCLE

Mode	1	2	3	4	5
Normalized Speed	1	0.85	0.75	0.65	Idle
Normalized Torque	1	0.51	0.33	0.19	0

¹⁵⁷ "Development and Validation of a Snowmobile Engine Emission Test Procedure," Jeff

J. White, Southwest Research Institute and Christopher W. Wright, Arctic Cat, Inc., Society of

Automotive Engineers paper 982017, September, 1998. (A-2000-1) document II-D-05.

TABLE VI.D-1.—PROPOSED SNOWMOBILE ENGINE TEST CYCLE—Continued

Mode	1	2	3	4	5
Relative Weighting (%)	12	27	25	31	5

We believe this duty cycle is representative of typical snowmobile operation and is therefore appropriate for demonstrating compliance with the proposed snowmobile emission standards. We request comment on this proposed duty cycle, and on any alternatives that we should consider.

The other proposed testing protocols are largely derived from our regulations for marine outboard and personal watercraft engines, as recommended in the SwRI/ISMA test cycle development work (61 FR 52088, October 4, 1996). The testing equipment and procedures from that regulation are generally appropriate for snowmobiles. Unlike snowmobiles, however, the marine engines tend to operate in fairly warm ambient temperatures. Thus, some provision needs to be made in the snowmobile test procedure to account for the colder ambient temperatures typical of snowmobile operation. Since snowmobile carburetors are jetted for specific ambient temperatures and pressures, we could take one of two general approaches. The first is to require testing at ambient temperatures typical of snowmobile operation, with appropriate jetting. A variation of this option is to simply require that the engine inlet air temperature be representative of typical snowmobile operation, without requiring that the entire test cell be at that temperature. The second is to allow testing at higher temperatures than typically experienced during snowmobile operation, with jetting appropriate to the warmer ambient temperatures.

We are proposing that snowmobile engine inlet air temperature be between -15°C and -5°C (5°F and 23°F), but that the ambient temperature in the test cell not be required to be refrigerated. We believe this approach strikes an appropriate balance between the need to test at conditions that are representative of actual use, and the fact that simply cooling the inlet air would be significantly less costly than requiring a complete cold test cell.

We request comment on whether we should allow snowmobile engine testing to be done according to the test procedures developed by Southwest Research Institute. Under those procedures testing is done at warmer ambient temperatures than typical of snowmobile operation. Appropriate jetting under this approach is

determined by extrapolating from the manufacturer's jet chart (if necessary).

We invite comment on all aspects of the proposed test procedures.

2. What Fuels Will Be Used During Emission Testing?

We are proposing to use the same fuel specifications for all recreational vehicles as we currently use for highway motorcycles and light-duty vehicles, which is representative of a summertime blend. We believe that off-highway motorcycles and ATVs use the same fuel as highway motorcycles. While snowmobiles typically operate during wintertime, we believe it is appropriate to use summertime gasoline for testing, primarily because it is the fuel that was used for the snowmobile emission testing that supported the development of our baseline emission estimates. Also, the majority of snowmobile HC emissions are a result of scavenging losses (unburned fuel from the intake charge exiting the combustion chamber with the exhaust gases). The primary difference between summertime and wintertime gasoline blends is the volatility, which is not likely to have a significant effect on scavenging losses. However, given that snowmobiles typically operate during wintertime, we request comment on whether we should consider a unique test fuel specifically for snowmobiles, and what specifications might be appropriate for such a fuel. Also, if we were to consider a unique snowmobile test fuel based on wintertime gasoline properties, should the proposed standards be adjusted in any way to account for the fact that the baseline emission estimates were developed from test data utilizing summertime blends.

3. Are There Production-Line Testing Provisions for These Engines?

We are proposing that recreational vehicle or engine manufacturers perform emission tests on a small percentage of their production as it leaves the assembly line to ensure that production vehicles operate at certified emission levels. The broad outline of this program is discussed in Section III.C.4 above. We are proposing that production-line testing be performed using the same test procedures as for certification testing. We request comment on all aspects of the proposed production-line testing requirements,

including engine sampling rates and options for using alternative testing methods.

E. Special Compliance Provisions

As described in Section XI.B, the report of the Small Business Advocacy Review Panel addresses the concerns of small-volume manufacturers of recreational vehicles.

Off-Highway Motorcycles and ATVs

To identify representatives of small businesses for this process, we used the definitions provided by the Small Business Administration for motorcycles, ATVs, and snowmobiles (fewer than 500 employees). Eleven small businesses agreed to serve as small-entity representatives. These companies represented a cross-section of off-highway motorcycle, ATV, and snowmobile manufacturers, as well as importers of off-highway motorcycles and ATVs.

As discussed above, our proposed emission standards for off-highway motorcycles and ATVs will likely necessitate the use of 4-stroke engines. Most small-volume off-highway motorcycle and ATV importers—and to a lesser degree, small-volume manufacturers—currently use 2-stroke engines. While 4-stroke engines are in widespread use in motorcycles and ATVs in general, their adoption by any manufacturer is still a significant business challenge. Small manufacturers of these engines could face additional challenges in certifying engines to emission standards, because the cost of certification would be spread over the relatively few engines they produce. These higher per-unit costs could place small manufacturers at a competitive disadvantage without specific provisions to address this burden.

We are proposing to apply the flexibilities described below to engines produced or imported by small entities with combined off-highway motorcycle and ATV annual sales of fewer than 5,000 units. The SBAR Panel recommended these provisions to address the potentially significant adverse effects on small entities of an emission standard that will likely result in the use of four-stroke engines. The 5,000-unit threshold is intended to focus these flexibilities on those segments of the market where the need

is likely to be greatest and to ensure that the flexibilities do not result in significant adverse environmental effects during the period of additional lead-time recommended below.¹⁵⁸ We request comment on the appropriateness of the 5,000-unit threshold. In addition, we propose to limit use of some or all of these flexibilities to entities that are in existence or have product sales at the time of proposal to avoid creating arbitrary opportunities in the import sector, and to guard against the possibility of corporate reorganization, entry into the market, or other action for the sole purpose of circumventing emission standards. We request comment on any such restrictions.

We also request comment on allowing small entities with sales in excess of 5,000 units to certify using the flexible approaches described below for several engines equal to their 2000 or 2001 sales level. This would assure that all small entities currently in the market would be able to take advantage of these approaches. In addition, we request comment on when small entities must notify EPA that they intend to use the small-entity flexibilities.

During the Panel's outreach meeting with small entities on issues related to recreational ATVs and off-road motorcycles, small entities expressed particular concern that a federal emission standard requiring manufacturers to switch to four-stroke engines might increase costs to the point that many small importers and manufacturers could experience significant adverse effects. As noted above, the Panel recommendations are designed to reduce the burden on small entities without compromising the environmental benefits of the program. However, it is possible that even with the broad flexibility under consideration, costs to small entities may still be too high. Also, they may not be able to recover costs without losing much or all of their business. We seek comment on the effect of the proposed standard on small entities, including any data or related studies to estimate the extent to which sales of their products are likely to be reduced as a result of changes in product price resulting from the proposed standards, more specifically from the conversion of two-stroke technology to four-stroke technology. Additionally, we seek comment on any differences in costs between small and large manufacturers. We plan to assess information received

in response to this request to inform the final rule decision-making process on whether additional flexibility (beyond that proposed below) is warranted.

Snowmobiles

There are only a few small snowmobile manufacturers and they sell only a few hundred engines a year, which represents less than 0.5 percent of total annual production. Therefore, the per-unit cost of regulation could be significantly higher for these small entities because they produce very low volumes. Additionally, these companies do not have the design and engineering resources to tackle compliance with emission standard requirements at the same time as large manufacturers and tend to have limited ability to invest the capital necessary to conduct emission testing related to research, development, and certification. Finally, the requirements of the snowmobile program may be infeasible or highly impractical because some small-volume manufacturers may have typically produced engines with unique designs or calibrations to serve niche markets (such as mountain riding). Our proposed snowmobile emission standards could impose significant economic hardship on these few manufacturers whose market presence is small. We therefore believe significant flexibility is necessary and appropriate for this category of small entities, as described below.

Flexibilities

1. Additional Lead Time

We believe additional lead-time would be a way of reducing the burden to meet the proposed standards. This would provide extra time for technology to develop and, in the case of importers, extra time to resolve supplier issues that may arise. We propose a delay of two years beyond the date larger businesses would be required to comply. For ATVs and snowmobiles, the two-year delay would also apply to the timing of the proposed Phase 2 standards.

In addition, for small snowmobile manufacturers, we propose that the emission standards be phased in over an additional two years at a rate of 50 percent, then 100 percent. Phase 1 would be phased in at 50/50/100 percent in 2008/2009/2010 and Phase 2 would be phased in 50/50/100 percent in 2012/2013/2014. We seek comment on whether a longer time period is appropriate given the costs of compliance for small businesses and the relationship between importers and their suppliers.

2. Design-Based Certification

The process of certification is a business cost and lead time issue that may place a disproportionate burden on small entities, particularly importers. Certification is a fixed cost of doing business, which is potentially more burdensome on a unit-cost basis for small entities. It is potentially an even greater challenge, since some small entities will either contract emission testing to other parties or, in the case of importers, perhaps rely on off-shore manufacturers to develop and certify imported engines.

We propose to permit small-volume manufacturers to use design-based certification, which would allow us to issue a certificate to a small business for the emission-performance standard based on a demonstration that engines or vehicles meet design criteria rather than by emission testing. The intent is to demonstrate that an engine using a design similar to or superior than that being used by larger manufacturers to meet the proposed emission standards would ensure compliance with the proposed standards. The demonstration would be based in part on emission test data from engines of a similar design. Under a design-based certification program, a manufacturer would provide evidence in the application for certification that an engine or vehicle would meet the applicable standards for its useful life based on its design (e.g., the use a four-stroke engine, advanced fuel injection, or any other particular technology or calibration). The design criteria could include specifications for engine type, calibrations (spark timing, air/fuel ratio, etc.), and other emission-critical features, including, if appropriate, catalysts (size, efficiency, precious metal loading). Manufacturers would submit adequate engineering and other information about their individual designs showing that they meet emission standards for the useful life. We request comment on how these provisions should be implemented. We also seek comment on whether we should allow large manufacturers to use similar provisions on a limited basis.

3. Broaden Engine Families

We propose an approach that would allow for relaxed criteria for what constitutes an engine or vehicle family. It would allow small businesses to put all their models into one vehicle or engine family (or more) for certification purposes if appropriate. Manufacturers would then certify their engines using the "worst-case" configuration within the family.

¹⁵⁸ For example, importers may have access to large supplies of vehicles from major overseas manufacturers and potentially could substantially increase their market share by selling less expensive noncomplying products.

A small manufacturer might need to conduct certification emission testing rather than pursuing design-based certification. Such a manufacturer would likely find broadened engine families useful.

4. Production-Line Testing Waiver

As discussed above, we are proposing to require manufacturers to test a small sampling of production engines to ensure that production engines meet emission standards. We propose to waive production-line testing for small entities and request comment on whether limits for this waiver would be appropriate. This would eliminate or substantially limit production-line testing requirements for small businesses. It could be limited to engine/vehicle families under a given production volume or could be applied broadly to small businesses. This is likely to be important to small businesses, many of which do not have testing facilities on-site and would rely on outside contractors for testing.

5. Use of Assigned Deterioration Factors for Certification

We propose to provide small entities with the option of using assigned deterioration factors. Rather than performing a durability demonstration for each family for certification, manufacturers would elect to use deterioration factors determined by us to demonstrate emission levels at the end of the useful life, thus reducing the development and testing burden. This could be a very useful and cost-beneficial option for a small manufacturer opting to perform certification emission testing instead of design-based certification.

6. Using Emission Standards and Certification From Other EPA Programs

A wide array of engines that have been certified to other EPA programs could be used in recreational vehicles. For example, there is a large variety of engines certified to EPA lawn and garden standards (Small SI). We propose to allow manufacturers of recreational vehicles to use engines certified to any other EPA standards for five years. Under this approach, engines certified to the Small SI standards could be used in recreational vehicles, and such engines would be subject to the Small SI standards and related provisions rather than the Recreational Vehicle program. The small business using the engine would not have to recertify the engine, provided the manufacturer does not alter the engine in such a way as to cause it to exceed the emission standards it was originally certified as

meeting. Also, the recreational vehicle application may not be the primary intended application for the engine. We request comment on which of the already established standards and programs would be a useful certification option for small businesses.

Additionally, a certified snowmobile engine produced by a large snowmobile manufacturer could be used by a small snowmobile manufacturer, provided the small manufacturer did not alter the engine in such a way as to cause it to exceed the snowmobile emission standards. This would provide a reasonable degree of emission control provided all other elements of the program were met. For example, if the only change a manufacturer were to make to the certified engine was to replace the stock Y-pipes and exhaust pipes with pipes of similar configuration or the stock muffler and air intake box with a muffler and air box of similar air flow, the engine could, subject to our review, still be eligible for this flexibility option. The manufacturer could also change the carburetor to have a leaner air/fuel ratio without losing eligibility. We believe that the manufacturer in such cases could establish a reasonable basis for knowing that emissions performance is not negatively affected by the changes. However, if the manufacturer were to change the bore or stroke of the engine, the engine would no longer qualify, as emissions could increase. We propose to allow the above approach for small snowmobile manufacturers.

7. Averaging, Banking, and Trading

For the overall program, we are proposing corporate-average emission standards with opportunities for banking and trading of emission credits. We would expect the averaging provisions to be most helpful to manufacturers with broad product lines. Small manufacturers and small importers with only a few models might not have as much opportunity to take advantage of these flexibilities. However, we received comment from one small manufacturer supporting these types of provisions as a critical component of the program. We request comment on how the provisions could be enhanced for small business to make them more useful.

8. Hardship Provisions

We are proposing provisions to address hardship circumstances, as described in Section VII.C.

9. Unique Snowmobile Engines

Even with the broad flexibilities described above, there may be a

situation where a small snowmobile manufacturer cannot comply. Therefore, we propose an additional provision to allow a small snowmobile manufacturer to petition us for relaxed standards for one or more engine families. The manufacturer would have to justify that the engine has unique design, calibration, or operating characteristics that make it atypical and infeasible or highly impractical to meet the emission-reduction requirements, considering technology, cost, and other factors. At our discretion, we would then set an alternative standard at a level between the prescribed standard and the baseline level. Such a standard would be intended to apply until the engine family is retired, or modified in such a way as to increase emissions. These engines would be excluded from the averaging calculation. We seek comment on allowing this provision for up to 300 engines per year per manufacturer, which would ensure that it is sufficiently available for those manufacturers needing it most.

We seek comment on initial and deadline dates for submitting these petitions. While any relief would be enacted for the first year standards apply, there may be value to getting feedback early. It would seem reasonable that the first date for submittals would be during the first year of requirements for large manufacturers. The deadline for submittals might be at some time during the last year of the small-business delay.

F. Technological Feasibility of the Standards

1. Off-Highway Motorcycles and ATVs

We believe the proposed standards are technologically feasible given the availability of emission-control technologies in the context of the proposed program, as described below.

a. What are the baseline technologies and emission levels? As discussed earlier, off-highway motorcycles and ATVs are equipped with relatively small (48 to 650 cc) high-performance two- or four-stroke single cylinder engines that are either air- or liquid-cooled.¹⁵⁹ Since these vehicles are unregulated outside of the state of California, the main emphasis of engine design is on performance, durability, and cost and thus they generally have no emission controls. The fuel systems used on these engines are almost exclusively carburetors. Two-stroke engines

¹⁵⁹The engines are small relative to automotive engines. For example, automotive engines typically range from one liter to well over five liters in displacement, whereas off-highway motorcycles would range from 0.05 liters to 0.65 liters.

lubricate the piston and crankshaft by mixing oil with the air and fuel mixture. This is accomplished by most contemporary 2-stroke engines with a pump that sends two-cycle oil from a separate oil reserve to the carburetor where it is mixed with the air and fuel mixture. Some less expensive two-stroke engines require that the oil be mixed with the gasoline in the fuel tank. Four-stroke engines inject oil via a pump throughout the engine as the means of lubrication. With the exception of those vehicles certified in California, most of these engines are unregulated and thus have no emission controls. For performance and durability reasons, off-highway motorcycle and ATV engines all tend to operate with a "rich" air and fuel mixture. That is, they operate with excess fuel, which enhances performance and allows engine cooling to promote longer engine life. However, rich operation results in high levels of HC, CO, and PM emissions. Also, two-stroke engines tend to have high scavenging losses, where up to a third of the unburned air and fuel mixture goes out of the exhaust resulting in high levels of HC emissions.

b. What technology approaches are available to control emissions? Several approaches are available to control emissions from off-highway motorcycles and ATVs. The simplest approach would consist of modifications to the base engine, fuel system, cooling system, and recalibration of the air and fuel mixture. These could, for example, consist of changes to valve timing for four-stroke engines, changing from air-to-liquid-cooling, and the use of advanced carburetion techniques or electronic fuel injection in lieu of traditional carburetion systems. Other approaches could include the use of secondary air injected into the exhaust, an oxidation or three-way catalyst, or a combination of secondary air and a catalyst. The engine technology that may have the most potential for maximizing emission reductions from two-stroke engines is the use of direct fuel injection. Direct fuel injection is able to reduce or even eliminate scavenging losses by pumping only air through the engine and then injecting fuel into the combustion chamber after the intake and exhaust ports have closed. The use of oxidation catalysts in conjunction with direct injection could potentially reduce emissions even further. Finally, conversion of two-stroke engine technology to four-stroke engine technology would significantly reduce HC emissions.

None of these technologies should have any negative noise, safety, or

energy impacts. Fuel injection can improve the combustion process which can result in lower engine noise. The vast majority of four-stroke engines used in off-highway motorcycles and ATVs are considerably quieter than their two-stroke counterparts. Fuel injection has no impact on safety and four-stroke engines often have a more "forgiving" power band which means the typical operator may find the performance of the machine to be more reasonable and safe. The use of fuel injection, the enleanment of the air and fuel mixture and the use of four-stroke technology all can result in significant reductions in fuel consumption.

c. What technologies are most likely to be used to meet the proposed standards? 2006 Standards. Four-Stroke Engines. We believe off-highway motorcycles and ATVs utilizing four-stroke engines will need only to make some minor calibration changes and improvements to the carburetor to meet our proposed emission standards for the 2006 model year. The calibration changes will most likely consist of reducing the amount of fuel in the air/fuel mixture. This is commonly referred to as enleaning the air/fuel ratio. Although four-stroke engines produce considerably lower levels of HC than two-stroke engines, the four-stroke engines used in off-highway motorcycles and ATVs all tend to be calibrated to operate with a rich air/fuel ratio for performance and durability benefits. This rich operation results in high levels of CO, since CO is formed in the engine when there is a lack of oxygen to complete combustion. We believe that many of these engines are calibrated to operate richer than needed, because they have either never had to consider emissions when optimizing air/fuel ratio or those that are certified to the California standards can operate richer because the California ATV CO standards are fairly lenient. Thus, we do not believe the standards will significantly reduce the performance or durability of these engines. Carburetion improvements could include increased carburetor tolerances, which would ensure more precise flow of fuel and air resulting in better fuel atomization (i.e., smaller fuel droplets), better combustion and less emissions.

Since our proposed emission standards are for HC+NO_x, as well as for CO, manufacturers will have to use an emission-control strategy or technology that doesn't cause NO_x emissions to increase disproportionately. However, since all of these vehicles operate with rich air/fuel ratios, as discussed above, NO_x levels from these engines are generally low and strategies designed to

focus on HC reduction should allow manufacturers to meet our proposed standards without significantly increasing NO_x levels.

Two-Stroke Engines. Off-highway motorcycles and ATVs using two-stroke engines will present a greater challenge for compliance with the proposed standards. We believe it is possible for a two-stroke engine equipped with direct injection and an oxidation catalyst to meet our proposed standards. However, there are several issues associated with direct injection, such as system durability and the need for high electrical system output, that need to be resolved before it can be successfully integrated into off-highway motorcycle and ATV applications by the 2006 model year. For example, there is concern over how durable a direct injection system would be when exposed to harsh environmental conditions such as water, mud, rocks and sand, to name a few. The typical electrical system on a two-stroke off-highway motorcycle and ATV uses a magneto system which produces between 250 and 300 watts of electrical power. A typical direct injection system needs up to 1,000 watts of electrical power, meaning a traditional low-cost magneto system would be insufficient and possibly have to be replaced with an expensive and cumbersome alternator, similar to what is used on automobiles. For these reasons, and because of the potential complexities and cost of a direct injection system, we anticipate that most manufacturers would choose to convert models using two-stroke engines to four-stroke engines. Most manufacturers have experience with four-stroke engine technology and currently have several models powered by four-stroke engines. This is especially true in the ATV market where four-stroke engines account for 80 percent of sales. Because four-stroke engines have been so prevalent over the last 10 years in the off-highway motorcycle and ATV industry, manufacturers have developed a high level of confidence in four-stroke technology and its application. In addition to converting to four-stroke technology, manufacturers will also most likely have to make some minor calibration and carburetion improvements to meet the proposed 2006 emission standards.

2009 Standards. As discussed above, the proposed 2009 standards are proposed to apply only to ATVs. To meet these standards, we believe manufacturers will need to use four-stroke engines with further advancements in carburetor calibrations and improved tolerances or possibly

even switch to electronic fuel injection for some models. There is currently one manufacturer who uses electronic fuel injection in their off-highway motorcycles and ATVs. The technologies most likely to be used to meet these standards are secondary air and/or an oxidation catalytic converter.

Secondary air has been used by passenger cars and highway motorcycles for many years as a means to help control HC and CO. The hot exhaust gases coming from the combustion chamber contain significant levels of unburned HC and CO. If sufficient oxygen is present, these gases will continue to react in the exhaust system, reducing the amount of pollution emitted into the atmosphere. To assure that sufficient oxygen is present in the exhaust, air is injected into the exhaust system. For off-highway motorcycles and ATVs, the additional air can be injected into the exhaust manifold using a series of check valves which use the normal pressure pulsations in the exhaust manifold to draw air from outside. We have tested several four-stroke ATVs with secondary air injected into the exhaust manifold and found that the HC and CO emission levels were at or below our proposed 2009 standards (further details of our secondary air testing are described in the Draft Regulatory Support Document). Thus, we believe secondary air injection alone could be a viable technology used by ATV manufacturers to meet our proposed 2010 standards.

We also tested several ATVs with oxidation catalysts. We evaluated several different catalyst configurations with varying size, loading, cell density, and washcoat. We also examined different catalyst locations in the exhaust system. We found that a relatively small oxidation catalyst located in the exhaust system produced emission levels below our proposed emission standards. Therefore, we also believe that the use of an oxidation catalyst could be another viable technology available to ATV manufacturers to meet our proposed 2009 emission standards.

2. Snowmobiles

a. What are the baseline technologies and emission levels? As discussed earlier, snowmobiles are equipped with relatively small high-performance two-stroke two and three cylinder engines that are either air- or liquid-cooled. Since these vehicles are currently unregulated, the main emphasis of engine design is on performance, durability, and cost and thus they have no emission controls. The fuel system used on these engines are almost

exclusively carburetors, although some have electronic fuel injection. Two-stroke engines lubricate the piston and crankshaft by mixing oil with the air and fuel mixture. This is accomplished by most contemporary 2-stroke engines with a pump that sends two-cycle oil from a separate oil reserve to the carburetor where it is mixed with the air and fuel mixture. Some less expensive two-stroke engines require that the oil be mixed with the gasoline in the fuel tank. Snowmobiles currently operate with a "rich" air and fuel mixture. That is, they operate with excess fuel, which enhances performance and allows engine cooling which promotes longer lasting engine life. However, rich operation results in high levels of HC, CO, and PM emissions. Also, two-stroke engines tend to have high scavenging losses, where up to a third of the unburned air and fuel mixture goes out of the exhaust resulting in high levels of raw HC. Current average snowmobile emission rates are 397 g/kW-hr (296 g/hp-hr) CO and 150 g/kW-hr (111 g/hp-hr) HC.

b. What technology approaches are available to control emissions? We believe the proposed standards would be technologically feasible. A variety of technologies are currently available or in stages of development to be available for use on 2-stroke snowmobiles. These include improvements to carburetion (improved fuel control and atomization, as well as improved production tolerances), leaner strategies for both carbureted and fuel injected engines, and semi-direct and direct fuel injection. In addition to these 2-stroke technologies, converting to 4-stroke engines is feasible for some snowmobile types. Each of these is discussed in the following paragraphs.

There are several things that can be done to improve carburetion in snowmobile engines. First, strategies to improve fuel atomization would promote more complete combustion of the fuel/air mixture. Additionally, production tolerances could be improved for more consistent fuel metering. Both of these things would allow for more accurate control of the air/fuel ratio. In conjunction with these improvements in carburetion, the air/fuel ration could be leaned out some. Snowmobile engines are currently calibrated with rich air/fuel ratios for durability reasons. Leaner calibrations would serve to reduce CO and HC emissions. Such calibration changes could reduce snowmobile engine durability. However, there are many engine improvements that could be made to regain lost durability that occurs with leaner calibration. These

include changes to the cylinder head, pistons, ports and pipes to reduce knock. In addition critical engine components could be made more robust to improve durability.

The same calibration changes to the air/fuel ratio just discussed for carbureted engines could also be employed, possibly with more accuracy, with the use of fuel injection. At least one major snowmobile manufacturer currently employs electronic fuel injection on several of its snowmobile models.

In addition to rich air/fuel ratios, one of the main reasons that two-stroke engines have such high HC emission levels is that they release a substantial amount of unburned fuel into the atmosphere as a result of scavenging losses, as described above. One way to reduce or eliminate such losses is to inject the fuel into the cylinder after the exhaust port has closed. This can be done by injecting the fuel into the cylinder through the transfer port (semi-direct injection) or directly into the cylinder (direct injection). Both of these approaches are currently being used successfully in two-stroke personal watercraft engines. We believe these technologies hold promise for application to snowmobiles. Manufacturers must address a variety of technical design issues for adapting the technology to snowmobile operation, such as operating in colder ambient temperatures and at variable altitude. The several years of lead time give manufacturers time to incorporate these development efforts into their overall research plan as they apply these technologies to snowmobiles.

In addition to the two-stroke technologies just discussed, the use of four-stroke engines in snowmobiles is another feasible approach to reduce emissions. Since they do not scavenge the exhaust gases with the incoming air/fuel mixture, four-stroke engines have inherently lower HC emissions compared to two-strokes. Four-stroke engines have a lower power to weight ratio than two-stroke engines and are heavier. Thus, they are more appropriately used in snowmobile models where extreme power and acceleration are not the primary selling points. Such models include touring and sport trail sleds, as opposed to high performance sleds such as those used for aggressive trail, cross country, mountain and lake riding.

c. What technologies are most likely to be used to meet the proposed standards. 2006 Standards. We expect that, in the context of an emission-credit program, manufacturers might choose to take different paths to meet the

proposed 2006 model year emission standards. We expect that many of the reductions required will come from aggressive implementation of improved carburetion and enleanment strategies. Manufacturers have indicated to us that direct injection strategies can result in emission reductions of 70 to 75 percent for HC and 60 to 65 percent for CO. Certification results from 2000 model year outboard engines and PWC support such reductions. At least one manufacturer has indicated that direct injection technology will be available for snowmobiles on at least some models well in advance of 2006. We believe that as manufacturers learn to apply direct injection strategies they may choose to implement those technologies on some of their more expensive sleds and use less aggressive technologies, such as improved carburetion and enleanment on their lower performance models. Finally, there are at least two snowmobile manufacturers planning on offering four-stroke models in the future, and we expect further interest in four-strokes to develop for those snowmobile categories for which four-strokes are a good fit.

2010 Standards. We expect that, in the context of an emission credit program, manufacturers would choose to apply enleanment strategies and the associated engine modification to roughly half of their production. The rest of their production would encompass primarily direct injection two stroke and to a much lesser extent, four stroke technology.

VII. General Nonroad Compliance Provisions

This section describes a wide range of compliance provisions that apply generally to all of the engines and vehicles that would be subject to the proposed standards. Several of these provisions apply not only to manufacturers, but also to equipment manufacturers installing certified engines, remanufacturing facilities, operators, and others.

The proposed regulatory text for the compliance requirements for Large SI and recreational vehicles would be contained in a new Part 1068 of title 40, entitled "General Compliance Programs for Nonroad Engines." The compliance provisions for marine engines would be the same as those in our existing programs for commercial diesel marine engines (40 CFR part 94), which are similar to the provisions proposed in 40 CFR part 1068.

The following discussion of the general nonroad provisions follows the proposed regulatory text. For ease of reference, the subpart designations are

provided. We request comment on all these provisions.

A. Miscellaneous Provisions (Part 1068, Subpart A)

This regulation contains some general provisions, including general applicability and the definitions that apply to Part 1068. Other provisions concern good engineering judgment, how we would handle confidential information; how the EPA Administrator delegates decision-making authority; and when we may inspect a manufacturer's facilities, engines, or records.

The process of testing engines and preparing an application for certification requires the manufacturer to make a variety of judgments. This includes, for example, selecting test engines, operating engines between tests, and developing deterioration factors. Section 1068.5 of the proposed regulations describes the methodology we propose to use to evaluate concerns related to manufacturers' use of good engineering judgment in cases where the manufacturer has such discretion. If we find a problem in these areas, we would take into account the degree to which any error in judgment was deliberate or in bad faith. This subpart is consistent with provisions in the final rule for light-duty highway vehicles and commercial marine diesel engines.

B. Prohibited Acts and Related Requirements (Part 1068, Subpart B)

The proposed provisions in this subpart lay out a set of prohibitions for engine manufacturers, equipment manufacturers, operators, and engine rebuilders to ensure that engines comply with the emission standards. These provisions are summarized below, but readers are encouraged to review the proposed regulatory text. These provisions are intended to help ensure that each new engine sold or otherwise entered into commerce in the United States is certified to the relevant standards, that it remains in its certified configuration throughout its lifetime, and that only certified engines are used in the appropriate nonroad equipment.

1. General Prohibitions (§ 1068.100)

This proposed regulation contains several prohibitions consistent with the Clean Air Act. No one may sell an engine in the United States without a valid certificate of conformity issued by EPA, deny us access to relevant records, or keep us from entering a facility to test or inspect engines. In addition, no one may remove or disable a device or design element that may affect an engine's emission levels, or manufacture

any device that will make emission controls ineffective, which we would consider tampering. We have generally applied the existing policies developed for tampering with highway engines and vehicles to nonroad engines.¹⁶⁰ Other prohibitions reinforce manufacturers' obligations to meet various certification requirements. We also prohibit selling engine parts that prevent emission-control systems from working properly. Finally, for engines that are excluded for certain applications (i.e., stationary or solely for competition), we generally prohibit using these engines in other applications.

These proposed prohibitions are the same as those that apply to other engines we have regulated in previous rulemakings. Each prohibited act has a corresponding maximum penalty as specified in Clean Air Act section 205. As provided for in the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 10-410, these maximum penalties are in 1970 dollars and should be periodically adjusted by regulation to account for inflation. The current penalty amount for each violation is \$27,500.¹⁶¹

2. Equipment Manufacturer Provisions (§ 1068.105)

According to this proposed regulation, equipment manufacturers may not sell new equipment with uncertified engines once the emission standards begin to apply. We would allow a grace period for equipment manufacturers to use up their supply of uncertified engines, as long as they follow their normal inventory practices for buying engines.

We propose to require equipment manufacturers to observe the engine manufacturers emission-related installation specifications to ensure that the engine remains consistent with the application for certification. This may include such things as radiator specifications, placement of catalytic converters, diagnostic signals and interfaces, and steps to minimize evaporative emissions.

If equipment manufacturers install a certified engine in a way that obscures the engine label, we propose to require them to add a duplicate label on the equipment. Equipment manufacturers may make these labels or get them from the engine manufacturer.

¹⁶⁰ "Interim Tampering Enforcement Policy," EPA memorandum from Norman D. Shulter, Office of General Counsel, June 25, 1974 (Docket A-2000-01; document II-B-20).

¹⁶¹ EPA acted to adjust the maximum penalty amount in 1996 (61 FR 69364, December 31, 1996). See also 40 CFR part 19.

If equipment manufacturers don't fulfill the responsibilities we describe in this section, we would consider them to be violating one or more of the prohibited acts described above.

3. In-Service Engines (§ 1068.110)

The proposed regulations would prevent manufacturers from requiring owners to use any certain brand of aftermarket parts and give the manufacturer responsibility for engine servicing related to emissions warranty, leaving the responsibility for all other maintenance with the owner. This proposed regulation would also reserve our right to do testing (or require testing) to investigate potential defeat devices, as authorized by the Act.

4. Engine Rebuilding (§ 1068.120)

We are proposing to establish rebuild provisions for all the nonroad engines subject to the proposed emission standards. This approach is similar to what applies to heavy-duty highway engines, nonroad diesel engines, and commercial marine diesel engines. This is necessary to prevent an engine rebuilder from rebuilding engines in a way that disables the engine's emission controls or compromises the effectiveness of the emission-control system. For businesses involved in commercial engine rebuilding, we are proposing minimal recordkeeping requirements so rebuilders can show that they comply with regulations.

In general, we propose to require that anyone who rebuilds a certified engine must restore it to its original (or a lower-emitting) configuration. We are proposing to add unique requirements for rebuilders to replace some critical emission-control components such as fuel injectors and oxygen sensors in all rebuilds for engines that use those technologies. We are also proposing that rebuilders replace an existing catalyst if there is evidence that the catalyst is not functional; for example, if a catalyst has lost its physical integrity with loose pieces rattling inside, it would need to be replaced. See § 1068.65 for more detailed information.

The proposed rebuilding provisions define good rebuilding practices to help rebuilders avoid violating the prohibition on "removing or disabling" emission-control systems. We therefore propose to extend these provisions to individuals who rebuild their own engines, but without any recordkeeping requirements.

We request comment on applying these proposed requirements for engine rebuilding and maintenance to the engines and vehicles subject to this rulemaking. In addition, we request

comment on the associated recordkeeping requirements.

C. Exemptions (Part 1068, Subpart C)

We are proposing to include several exemptions for certain specific situations. Most of these are consistent with previous rulemakings. We highlight the new or different proposed provisions in the following paragraphs. In general, exempted engines would need to comply with the requirements only in the sections related to the exemption. Note that additional restrictions could apply to importing exempted engines (see Section VII.D). Also, we are also proposing that we may require manufacturers (or importers) to add a permanent label describing that the engine is exempt from emission standards for a specific purpose. In addition to helping us enforce emission standards, this would help ensure that imported engines clear Customs without difficulty.

1. Testing

Anyone would be allowed to request an exemption for engines used only for research or other investigative purposes.

2. Manufacturer-Owned Engines

Engines that are used by engine manufacturers for development or marketing purposes could be exempted from regulation if they are maintained in the manufacturers' possession and are not used for any revenue-generating service.

3. Display Engines

Engine manufacturers would get an exemption without request if the engines are for display only.

4. National Security

Engine manufacturers could receive an exemption for engines they can show are needed by an agency of the federal government responsible for national defense. For cases where the engines will not be used on combat applications, the manufacturer would have to request the exemption with the endorsement of the procuring government agency.

5. Exported Engines

Engines that will be exported to countries that don't have the same emission standards as those that apply in the United States would be exempted without need for a request. This exemption would not be available if the destination country has the same emission standards as those in the United States.

6. Competition Engines

New engines that are used solely for competition are excluded from

regulations applicable to nonroad engines. For purposes of our certification requirements, a manufacturer would receive an exemption if it can show that it produces the engine specifically for use solely in competition. In addition, engines that have been modified for use in competition would be exempt from the prohibition against tampering described above (without need for request). The literal meaning of the term "used solely for competition" would apply for these modifications. We would therefore not allow the engine to be used for anything other than competition once it has been modified. This also applies to someone who would later buy the engine, so we would require the person modifying the engine to remove or deface the original engine label and inform a subsequent buyer in writing of the conditions of the exemption.

7. Replacement Engines

An exemption would be available to engine manufacturers without request if that is the only way to replace an engine from the field that was produced before the current emission standards took effect. If less stringent standards applied to the old engine when it was new, the replacement engine would also have to meet those standards.

8. Hardship Related to Economic Burden

There are two types of hardship provisions. The first type of hardship program would allow small businesses to petition EPA for additional lead time (e.g., up to 3 years) to comply with the standards. A small manufacturer would have to make the case that it has taken all possible business, technical, and economic steps to comply but the burden of compliance costs would have a significant impact on the company's solvency. A manufacturer would be required to provide a compliance plan detailing when and how it would achieve compliance with the standards. Hardship relief could include requirements for interim emission reductions and/or purchase and use of emission credits. The length of the hardship relief decided during review of the hardship application would be up to one year, with the potential to extend the relief as needed. The second hardship program would allow companies to apply for hardship relief if circumstances outside their control cause the failure to comply (i.e., supply contract broken by parts supplier) and if the failure to sell the subject engines would have a major impact on the company's solvency. See the proposed

regulatory text in 40 CFR 1068.240 and 1068.241 for additional details.

9. Hardship for Equipment Manufacturers

Equipment manufacturers in many cases depend on engine manufacturers to supply certified engines in time to produce complying equipment by the date emission standards begin to apply. This is especially true for industrial and marine applications. In other programs, we have heard of certified engines being available too late for equipment manufacturers to adequately accommodate changing engine size or performance characteristics. To address this concern, we are proposing to allow equipment manufacturers to request up to one extra year before using certified engines if they are not at fault and would face serious economic hardship without an extension. See the proposed regulatory text in 40 CFR 1068.245 for additional information.

D. Imports (Part 1068, Subpart D)

In general, the same certification requirements would apply to engines and equipment whether they are produced in the U.S. or are imported. This proposed regulation also includes some additional provisions that would apply if someone wants to import an exempted or excluded engine. For example, the importer would need written approval from us to import any exempted engine; this is true even if an exemption for the same reason doesn't require approval for engines produced in the U.S.

All the proposed exemptions described above for new engines would also apply to importation, though some of these apply only on a temporary basis. If we approve a temporary exemption, it would be available only for a defined period and could require the importer to post bond while the engine is in the U.S. There are several additional proposed exemptions that would apply only to imported engines.

—*Identical configuration*: This would be a permanent exemption to allow individuals to import engines that were designed and produced to meet applicable emission standards. These engines may not have the emission label only because they were not intended for sale in the United States. This exemption would apply to all the nonroad engines covered by this proposal. We did not finalize this exemption for commercial marine diesel engines, since we expected no individuals to own or import such an engine.

—*Personal use*: This would be a permanent exemption to allow

individuals to import engines for their personal use. To prevent abuse of this exemption, we would require that importers own the exempted engines and we would generally exempt only one of each type of engine over an individual's lifetime.

—*"Antique" engines*: We would generally treat used engines as new if they are imported without a certificate of conformity. However, this permanent exemption would allow for importation of uncertified engines if they are more than 20 years old in their original configuration.

—*Repairs or alterations*: This would be a temporary exemption to allow companies to repair or modify engines. This exemption would not allow for operating the engine, except as needed to do the intended work.

—*Diplomatic or military*: This would be a temporary exemption to allow diplomatic or military personnel to use uncertified engines during their term of service in the U.S.

We request comment on all the proposed exemptions for domestically produced and imported engines and vehicles.

E. Selective Enforcement Audit (Part 1068, Subpart E)

Clean Air Act section 206(b) gives us the discretion in any program with vehicle or engine emission standards to do selective enforcement auditing of production engines. In selective enforcement auditing, we would choose an engine family and give the manufacturer a test order detailing a testing program to show that production-line engines meet emission standards. The proposed regulation text describes the audit procedures in greater detail.

We intend generally to rely on manufacturers' testing of production-line engines to show that they comply with emission standards. However, we reserve our right to do selective enforcement auditing if we have reason to question the emission testing conducted and reported by the manufacturer.

F. Defect Reporting and Recall (Part 1068, Subpart F)

We are proposing provisions for defect reporting. Specifically, we are proposing that manufacturers tell us when they learn of a defect occurring 25 times or more for engine families with annual sales up to 10,000 units. This threshold of defects would increase proportionately for larger families. For catalyst-related defects, we propose a threshold of approximately half the frequency of noncatalyst problems to

trigger a defect report. While these thresholds would depend on engine family sales, counting defects would not be limited to a single engine family. For example, if a manufacturer learns that operators reported 25 cases of a short-circuit in the electronic control unit from three different low-volume engine models spread over five years, that would trigger the need to file a defect report. This information could come from warranty claims, customer complaints, product performance surveys, or anywhere else. The proposed regulation language in § 1068.501 also provides information on the thresholds for triggering a further investigation for where a defect report is more likely to be necessary. We request comment on the proposed defect reporting provisions.

Under Clean Air Act section 207, if we determine that a substantial number of engines within an engine family, although properly used and maintained, do not conform to the appropriate emission standards, the manufacturer will be required to remedy the problem and conduct a recall of the noncomplying engine family. However, we also recognize the practical difficulty in implementing an effective recall program for nonroad engines. It would likely be difficult to properly identify all the affected owners absent a nationwide registration requirement similar to that for cars and trucks. The response rate for affected owners or operators to an emission-related recall notice is also a critical issue to consider. We recognize that in some cases, recalling noncomplying nonroad engines may not achieve sufficient environmental protection, so our intent is to generally allow manufacturers to nominate alternative remedial measures to address most potential noncompliance situations. We expect that successful implementation of appropriate alternative remediation would obviate the need for us to make findings of substantial nonconformity under section 207 of the Act. We would consider alternatives nominated by a manufacturer based on the following criteria; the alternatives should—

(1) Represent a new initiative that the manufacturer was not otherwise planning to perform at that time, with a clear connection to the emission problem demonstrated by the engine family in question;

(2) Cost more than foregone compliance costs and consider the time value of the foregone compliance costs and the foregone environmental benefit of the engine family;

(3) Offset at least 100 percent of the emission exceedance relative to that

required to meet emission standards (or Family Emission Limits); and

(4) Be possible to implement effectively and expeditiously and to complete in a reasonable time.

These criteria would guide us in evaluating projects to determine whether their nature and burden is appropriate to remedy the environmental impact of the nonconformity. We request comment on this approach to addressing the Clean Air Act provisions related to recall. In addition, we request comment on the proposed requirement to keep recall-related records until three years after a manufacturer completes all responsibilities under a recall order.

G. Public Hearings (Part 1068, Subpart G)

According to this regulation, manufacturers would have the opportunity to challenge our decision to suspend, revoke, or void an engine family's certificate. This also applies to our decision to reject the manufacturer's use of good engineering judgment (see § 1068.005). Part 1068, subpart G, describes the proposed procedures for a public hearing to resolve such a dispute.

VIII. General Test Procedures

The regulatory text in part 1065 is written with the intent to apply broadly to EPA engine programs. This proposal, however, applies to anyone who tests engines to show that they meet the emission standards for Large Industrial SI engines or for recreational vehicles. This includes certification testing, as well as all production-line and in-use testing. See the program descriptions above for testing provisions that are unique to Large SI engines. We may later propose to apply the same provisions to other engines, with any appropriate additions and changes. Recreational marine diesel engines would use the test procedures already adopted in 40 CFR part 94.

A. General Provisions

As we have done in previous programs, we are proposing specific test procedures to define how measurements are to be made, but would allow the use of alternate procedures if they are shown to be equivalent to our specified procedures. The test procedures proposed in part 1065 are derived from our test procedures in 40 CFR Part 86 for highway heavy-duty gasoline engines and light-duty vehicles. The procedures have been simplified (and to some extent generalized) to better fit nonroad engines. We request comment on all aspects of these proposed test procedures. We also request comment

regarding whether any additional parts of the test procedures contained in 40 CFR part 86 (for highway vehicles and engines), in other parts that apply to nonroad engines, or in ISO 8178 should be incorporated into the final test procedures.

B. Laboratory Testing Equipment

The proposed regulations do not specify the type of engine or chassis dynamometer that must be used during testing. Rather, they include performance criteria that must be met during each test. These criteria are intended to ensure that deviations from the specified speed and load duty cycle are small. Steady-state testing calls for a minimal degree of sophistication in the dynamometer system.

Measuring emissions during transient operation calls for a greater degree of sophistication than steady-state testing. For chassis testing of recreational vehicles, we propose to use the specifications adopted in 40 CFR part 86 for highway engines. For Large SI engines, we based the dynamometer specifications around the capabilities of current dynamometers with enhanced control capabilities. Furthermore, we would require any EPA confirmatory testing to meet more stringent specifications than manufacturers testing their own engines.

In addition, for transient testing with recreational vehicles and any testing with Large SI engines, the proposed regulations specify that emissions be measured using a full-dilution constant-volume sampler (CVS) like those used to measure emissions from highway engines. This means that during a test, an engine's exhaust would be routed into a dilution tunnel where it would be mixed with air, and then sampled using a bag sampler system. After the test, the concentrations of HC, CO, and NO_x in the bag would be measured using conventional laboratory analyzers.

For industrial spark-ignition engines and snowmobiles, the proposed steady-state test procedures specify measuring emissions with dilute-sampling equipment. Some manufacturers have expressed a preference to continue with their established practice of using raw-sampling equipment and procedures. While we believe dilute-sampling is most appropriate for these engines, the proposed provisions for alternate testing procedures may allow for raw-sampling measurements. As specified in paragraph 1065.010(c)(3) of the proposed regulations, we would allow manufacturers to use alternate procedures that are shown to be equivalent to the proposed procedures. We request comment on this approach

to emission-measurement procedures. Specifically, we request comment on the degree of equivalence that should be shown to gain approval of alternate procedures. See the final rule for 2007 heavy-duty highway engine emission standards for one approach of defining a tolerance on equivalence for alternate procedures (66 FR 5002, January, 18, 2001).

C. Laboratory Testing Procedures

We are proposing specific procedures for running the test. These procedures are outlined briefly here, with a more detailed description of the most significant aspects. Before starting the test, it would be necessary to operate the engine for some time to improve the stability of the emissions, or to make the engine more representative of in-use engines. This is called service accumulation, and may take one of two forms. In the first method, a new engine is operated for about 50 hours as a break-in period. This would be done for most or all emission-data engines (for certification). The second method is much longer (up to the full useful life), and is done to obtain deterioration factors.

Once an engine is ready for testing, it is connected to the dynamometer with its exhaust flowing into the dilution tunnel. The dynamometer is controlled to make the engine follow the specified duty cycle. A continuous sample would be collected from the dilution tunnel for each test segment or test mode using sample bags. These bags would then be analyzed to determine the concentrations of HC, CO, and NO_x.

1. Test Speeds

The definition of maximum test speed, where speed is the angular velocity of an engine's crankshaft (usually expressed in revolutions per minute, or rpm), is an important aspect of the duty cycles for testing. Until recently, we relied on engine manufacturers to declare reasonable rated speeds for their engines and then used the rated speed as the maximum test speed. However, to have a more objective measure of an engine's maximum test speed, we have established an objective procedure for measuring this engine parameter.¹⁶²

We propose to define the maximum test speed for any engine to be the single point on an engine's maximum-power versus speed curve that lies farthest away from the zero-power, zero-speed point on a normalized maximum-power

¹⁶² See the final rule for commercial marine diesel engines for a broader discussion of maximum test speed (64 FR 249, December 29, 1999).

versus speed plot. In other words, consider straight lines drawn between the origin (speed = 0, load = 0) and each point on an engine's normalized maximum-power versus speed curve. Maximum test speed is defined at that point where the length of this line reaches its maximum value. For constant-speed engines, maximum test speed is the engine's rated speed.

Intermediate speed for steady-state duty cycles is generally defined as the speed at which the engine generates its maximum torque value. However, in cases where the maximum torque occurs at a speed that is less than 60 percent or greater than 75 percent of the rated speed, the intermediate speed is often specified as either 60 or 75 percent of rated speed, whichever is closer to the speed of maximum torque. We propose to use this approach, using the maximum test speed described above to calculate these percentage values.

We request comment on applying this method of determining rated speed to ATVs certified to engine-based emission standards, recreational marine diesel engines, and Large SI engines.

2. Maintenance

As described in Section III.C.1, we are proposing limits on the amount of scheduled maintenance manufacturers may prescribe for their customers to

ensure that engines continue to meet emission standards. If manufacturers would specify unreasonably frequent maintenance, there would be little assurance that in-use engines would continue to operate at certified emission levels. We would also apply these minimum maintenance intervals to engines the manufacturer operates for service accumulation before testing for emissions. For example, manufacturers could not install a new catalyst on a Large SI engine after 2,000 hours of operation, then select that engine for the in-use testing program. Similarly, manufacturers could not replace fuel-system components on a recreational vehicle during the course of service accumulation for establishing deterioration factors. We would not restrict scheduling of routine maintenance item such as changing engine oil and replacing oil, fuel, or air filters. We may also allow changing spark plugs, even though we are aware that spark plugs can significantly affect emissions.

IX. Projected Impacts

This section summarizes the projected impacts of the proposed emission standards. The anticipated environmental benefits are compared with the projected cost of the program

for an assessment of the cost per ton of reducing emissions for this proposal.

A. Environmental Impact

To estimate nonroad engine and vehicle emission contributions, we used the latest version of our NONROAD emissions model. This model computes emission levels for a wide variety of nonroad engines, and uses information on emission rates, operating data, and population to determine annual emission levels of various pollutants. A more detailed description of the methodology used for projecting inventories and projections for additional years can be found in the Chapter 6 of the Draft Regulatory Support Document. We request comment on all aspects of the emission inventory analysis, including the usage rates and other inputs used in the analysis.

Tables IX.A-1 and IX.A-2 contain the projected emission inventories for the years 2010 and 2020, respectively, from the engines and vehicles subject to this proposal under the base case (i.e., without the proposed standards taking effect) and assuming the proposed standards take effect. The percent reductions based on a comparison of estimated emission inventories with and without the proposed emission standards are also presented.

TABLE IX.A-1.—2010 PROJECTED EMISSIONS INVENTORIES

[Thousand short tons]

Category	Exhaust CO			Exhaust NO _x			Exhaust HC**		
	Base case	With proposed standards	Percent reduction	Base case	With proposed standards	Percent reduction	Base case	With proposed standards	Percent reduction
Industrial SI >19kW	2,615	1,152	56	397	152	62	293	111	62
Snowmobiles	567	415	27	1	1	0	213	155	27
ATVs	3,901	3,380	13	21	21	0	1,098	756	31
Off-highway motorcycles	194	172	11	1	1	0	143	112	22
Recreational Marine diesel*	5	5	0	31	29	7	0.9	1.0	10
Total	7,292	5,124	30	451	204	55	1,748	1,135	35

* We also anticipate a 2 percent reduction in direct PM from a baseline of inventory of 1,184 tons in 2010 to a control inventory of 1,158 tons.

** The Industrial SI >19 kW estimate includes both exhaust and evaporative emissions.

TABLE IX.A-2.—2020 PROJECTED EMISSIONS INVENTORIES

[Thousand short tons]

Category	Exhaust CO			Exhaust NO _x			Exhaust HC**		
	Base case	With proposed standards	Percent reduction	Base case	With proposed standards	Percent reduction	Base case	With proposed standards	Percent reduction
Industrial SI >19kW	2,991	231	92	486	77	84	346	50	86
Snowmobiles	609	227	63	2	2	0	229	85	63
ATVs	4,589	3,041	34	25	25	0	1,301	205	84
Off-highway motorcycles	208	154	26	1	1	0	154	77	50
Recreational Marine diesel*	6	6	0	39	32	17	1.3	1.0	25

TABLE IX.A-2.—2020 PROJECTED EMISSIONS INVENTORIES—Continued
[Thousand short tons]

Category	Exhaust CO			Exhaust NO _x			Exhaust HC**		
	Base case	With proposed standards	Percent reduction	Base case	With proposed standards	Percent reduction	Base case	With proposed standards	Percent reduction
Total	8,404	3,658	56	552	137	75	2,032	418	79

* We also anticipate a 6 percent reduction in direct PM from a baseline of inventory of 1,470 tons in 2020 to a control inventory of 1,390 tons.

** The Industrial SI >19 kW estimate includes both exhaust and evaporative emissions.

As described in Section II, we project there would also be environmental benefits associated with reduced haze in many sensitive areas.

Finally, anticipated reductions in hydrocarbon emissions correspond with reduced emissions of the toxic air emissions referenced in Section II.

B. Economic Impact

In assessing the economic impact of setting emission standards, we have made a best estimate of the technologies and their associated costs to meet the proposed standards. In making our estimates we have relied on our own technology assessment, which includes information supplied by individual manufacturers and our own in-house testing. Estimated costs include variable costs (for hardware and assembly time) and fixed costs (for research and development, retooling, and certification). The analysis also considers total operating costs, including maintenance and fuel consumption. Cost estimates based on the projected technologies represent an expected change in the cost of engines as they begin to comply with new emission standards. All costs are presented in 2001 dollars. Full details of our cost analysis can be found in Chapter 5 of the Draft Regulatory Support Document. We request comment on this cost information, and the issues discussed below.

Cost estimates based on the current projected costs for our estimated technology packages represent an expected incremental cost of vehicles in the near term. For the longer term, we have identified factors that would cause cost impacts to decrease over time. First, we project that manufacturers will generally recover their fixed costs over a five-year period, so these costs disappear from the analysis after the fifth year of production. Second, the analysis incorporates the expectation that manufacturers and suppliers will apply ongoing research and manufacturing innovation to making emission controls more effective and less costly over time. Research in the

costs of manufacturing has consistently shown that as manufacturers gain experience in production and use, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts.¹⁶³ (see the Draft Regulatory Support Document for additional information). The cost analysis generally incorporates this learning effect by decreasing estimated variable costs by 20 percent starting in the third year of production and an additional 20 percent starting in the sixth year of production.

Table IX.B-1 summarizes the projected costs to meet the new emission limits (retail-price equivalent). Long-term impacts on engine costs are expected to decrease as manufacturers fully amortize their fixed costs and learn to optimize their designs and production processes to meet the standards more efficiently. The tables also show our projections of reduced operating costs for some engines (calculated on a net present value basis), which generally results from substantial reductions in fuel consumption.

We estimate that the anticipated increase in the cost of producing new Large SI engines for the proposed 2004 standards is estimated to range from \$550 to \$800, depending on fuel type, with a composite estimated cost of \$600. This cost is attributed to upgrading engines to operate with closed-loop fuel systems and three-way catalysts. These technologies also improve the overall performance of these engines, including improvements to fuel economy that result in reduced operating costs that

¹⁶³ For further information on learning curves, see Chapter 5 of the Economic Impact, from Regulatory Impact Analysis—Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements, EPA 420-R-99-023, December 1999. A copy of this document is included in Air Docket A-2000-01, at Document No. II-A-83. The interested reader should also refer to previous final rules for Tier 2 highway vehicles (65 FR 6698, February 10, 2000), marine diesel engines (64 FR 73300, December 29, 1999), nonroad diesel engines (63 FR 56968, October 23, 1998), and highway diesel engines (62 FR 54694, October 21, 1997).

fully offset the additional hardware cost. We further estimate additional costs of \$45 for the 2007 standards, which primarily involves additional development time to optimize engines using the same closed-loop systems with three-way catalysts. While these costs are a small percentage of the cost of industrial equipment, we are aware that this is no small change in this very competitive market. Given the compelling advantages of improved performance and reduced operating expenses, however, we believe manufacturers will generally be able to recover their costs over time.¹⁶⁴ We request comment on whether these estimated costs associated with emission controls would affect larger or smaller engines disproportionately to the overall cost of producing the engines.

Projected costs for ATVs and off-highway motorcycles average between \$50 and \$150 per unit. Initial standards are based on the emission-control capability of engines four-stroke engines. Those models that convert from two-stroke to four-stroke technology will see substantial fuel savings in addition to greatly reduced emissions. The second phase of standards for ATVs is based on recalibrating four-stroke engines for lower emissions and adding a two-way catalyst or other device to further reduce emissions. With an averaging program that allows manufacturers to apply varying degrees of technology to different models, we believe they will be able to tailor emission controls in a way that reflects the marketing constraints for their products. Fuel savings and improved performance offsets the additional cost of producing most of these vehicles.

We expect that the cost of the 2006 snowmobile standards will average \$55 per snowmobile. These costs are based on manufacturers leaning out the air/fuel mixture, improving carburetors for better fuel control and less production

¹⁶⁴ Chapter 5 of the Draft Regulatory Support Document describes why we believe market forces haven't already led manufacturers to add fuel-saving technologies to their products.

variation, and modifying the engine to withstand higher temperatures and potential misfire episodes attributed to enleanment. We expect that the 2010 standards will be met through the application of direct injection 2-stroke technology on a significant portion of the fleet, as well as some conversion to 4-stroke engines. We project that the cost of these controls would average

\$216 per snowmobile, although we believe these costs would be offset by fuel savings and improved performance.

Recreational marine diesel engines would be expected to see increased costs averaging \$443 per engine in the near term. We expect manufacturers to meet the proposed standards by improving fuel injection systems and making general design changes to the

geometries, configurations, and calibrations of their engines. These figures are somewhat lower than we have projected for the comparable commercial marine engines, since the recreational models generally already have some of the emission-control technologies needed to meet the proposed emission standards.

TABLE IX.B-1.—ESTIMATED AVERAGE COST IMPACTS OF PROPOSED EMISSION STANDARDS

Engine type	Standard	Increased production cost per engine*	Lifetime operating costs per engine (NPV)
Large SI	2004	\$600	-\$3,985
Large SI	2007	45	.....
Snowmobiles	2006	55	.....
Snowmobiles	2010	216	-509
ATVs	2006	60	-102
ATVs	2009	52	.....
Off-highway motorcycles	2006	151	-98
Marine diesel	2006	443	.....

* The estimated long-term costs decrease by about 35 percent. Costs presented for second-phase standards for Large SI and ATVs are incremental to the first-phase standards.

The above analysis presents unit cost estimates for each engine type. These costs represent the total set of costs the engine manufacturers will bear to comply with emission standards. With current and projected estimates of engine and equipment sales, we translate these costs into projected direct costs to the nation for the new

emission standards in any year. A summary of the annualized costs to manufacturers by equipment type is presented in Table IX.B-2. (The annualized costs are determined over the first twenty-years that the proposed standards would be effective.) The annual cost savings due to reduced operating expenses, start slowly, then

increase as greater numbers of compliant engines enter the fleet. Table IX.B-2 presents a summary of the annualized reduced operating costs as well. Overall, we project, based on information currently available to us, that the annualized net savings to the economy would be approximately \$260 million per year.

TABLE IX.B-2.—ESTIMATED ANNUAL COST TO MANUFACTURERS AND ANNUAL SAVINGS FROM REDUCED OPERATING COSTS OF THE PROPOSED EMISSION STANDARDS

Engine type	Annualized cost to manufacturers (millions/year)	Annualized savings from reduced operating costs (millions/year)
Large SI	\$85	\$324
Snowmobiles	24	28
ATVs	59	81
Off-highway motorcycles	13	10
Marine Diesel	3	0
Aggregate	184	443

C. Cost per Ton of Emissions Reduced

We calculated the cost per ton of emission reductions for the proposed standards. For snowmobiles, this calculation is on the basis of CO emissions. For all other engines, we attributed the entire cost of the proposed program to the control of ozone precursor emissions (HC or NO_x or both). A separate calculation could apply to reduced CO or PM emissions

in some cases. Assigning the full compliance costs to a narrow emissions basis leads to cost-per-ton values that underestimate of the value of the proposed program.

Table IX.C-1 presents the near-term discounted cost-per-ton estimates for the various engines covered by the proposal. (The aggregate cost-per-ton estimates are over the first 20 years of the proposed programs.) Reduced operating costs more than offset the

increased cost of producing the cleaner engines for Phase 1 Large SI, Phase 1 ATV, and Phase 2 snowmobile engines. The cost to society and the associated cost-per-ton figures for these engines, and the aggregate values for all engines covered by this proposal, therefore show a net savings resulting from the proposed emission standards. The table presents these as \$0 per ton, rather than calculating a negative value that has no clear meaning.

TABLE IX.C-1.—ESTIMATED COST-PER-TON OF THE PROPOSED EMISSION STANDARDS

Engine type	Standard	Discounted reductions per engine (short tons)*	Discounted cost per ton of HC+NO _x		Discounted cost per ton of CO	
			Without fuel savings	With fuel savings	Without fuel savings	With fuel savings
Large SI (Composite of all fuels)	2004	3.14	\$220	\$0	.....	.....
Large SI (Composite of all fuels)	2007	0.56	80	80	.....	.....
Snowmobiles	2006	1.18	.....	.....	\$50	\$50
Snowmobiles	2010	0.32	.....	.....	670	0
ATVs	2006	0.88	70	0	.....	.....
ATVs	2009	0.09	550	550	.....	.....
Off-highway motorcycles	2006	0.37	310	110	.....	.....
Marine diesel	2006	0.68	580	580	.....	.....
Aggregate .....	.....	.....	140	0	100	0

* HC+NO_x reductions, except snowmobiles which are CO reductions.

D. Additional Benefits

For most of the engine categories contained in today's proposal, we expect there will be a fuel savings as manufacturers redesign their engines to comply with the proposed standards. For ATVs and off-highway motorcycles, the fuel savings will be realized as manufacturers switch from 2-stroke to 4-stroke technologies. For snowmobiles, the fuel savings will be realized as manufacturers switch some of their engines to more fuel efficient 2-stroke technologies and some of their engines to 4-stroke technologies. For Large SI engines, the fuel savings will be realized as manufacturers adopt more sophisticated and more efficient fuel systems. This is true for all fuels. Overall, we project the fuel savings associated with the anticipated changes in technology would be about 730 million gallons per year once the program is fully phased in. These savings are factored into the calculated costs and costs per ton of reduced emissions, as described above.

The controls in this rule are a cost-effective means of obtaining reductions in NO_x, NMHC and CO emissions. A related subject concerns the value of the health and welfare benefits these reductions might produce. While we have not conducted a formal benefit-cost analysis for this rule, we believe the benefits of this rule clearly will greatly outweigh any cost.

Ozone causes a range of health problems related to breathing, including chest pain, coughing, and shortness of breath. Exposure to PM (including secondary PM formed in the atmosphere from NO_x and NMHC emissions) has been associated in epidemiological studies with premature death, increased emergency room visits, and increased respiratory symptoms, and exacerbation of existing cardio-pulmonary disease. Children, the elderly, and individuals with pre-existing respiratory conditions

are most at risk regarding both ozone and PM. In addition, ozone and PM adversely affect the environment in various ways, including crop damage, acid rain, and visibility impairment. A discussion of the health and welfare effects from ozone and PM can be found in Section II of this preamble. Interested readers should also refer to Chapter 1 of the Draft Regulatory Support Document for this rule and Chapter 2 of EPA's "Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements."¹⁶⁵

In two recent mobile-source control rules, for light-duty vehicles (the Tier 2/Gasoline Sulfur rule) and for highway heavy-duty engines and diesel fuel, we conducted a full analysis of the expected benefits once those rules are fully implemented. These rules, which primarily reduced NO_x and NMHC emissions, were seen to yield health and welfare benefits far exceeding the costs. EPA projected that besides reducing premature mortality, these rules will reduce chronic bronchitis cases, hospital admissions for respiratory and cardiovascular causes, asthma attacks and other respiratory symptoms, emergency room visits for asthma attacks, acute bronchitis, work loss days, minor restricted activity days, and decreased worker productivity.

The majority of the benefits from those recent rules were due to their NO_x and NMHC emission reductions. Given the similarities in pollutants being controlled, we would expect this rule to produce similar benefits per ton of emission reduction. Since the cost per ton of emission reduction for this rule

is substantially lower than that for the two previous rules, we would expect an even more favorable benefit-cost ratio. Thus, we believe that the value of the health and welfare benefits of this rule would substantially outweigh any cost.

X. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments for the period indicated under **DATES** above. If you have an interest in the program described in this document, we encourage you to comment on any aspect of this rulemaking. We request comment on various topics throughout this proposal.

We attempted to incorporate all the comments received in response to the Advance Notice of Proposed Rulemaking, though not all comments are addressed directly in this document. Anyone who has submitted comments on the Advance Notice, or any previous publications related to this proposal, and feels that those comments have not been adequately addressed is encouraged to resubmit comments as appropriate.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposed program, we encourage you to suggest and analyze alternate approaches to meeting the air quality goals described in this proposal. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period.

If you submit proprietary information for our consideration, you should clearly separate it from other comments

¹⁶⁵ Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, document EPA420-R-00-026, December 2000, Docket No. 1-2000-01, Document No. II-A-13. This document is also available at <http://www.epa.gov/otaq/diesel.htm#documents>.

by labeling it "Confidential Business Information." You should also send it directly to the contact person listed under **FOR FURTHER INFORMATION CONTACT** instead of the public docket. This will help ensure that no one inadvertently places proprietary information in the docket. If you want us to use your confidential information as part of the basis for the final rule, you should send a nonconfidential version of the document summarizing the key data or information. We will disclose information covered by a claim of confidentiality only through the application of procedures described in 40 CFR part 2. If you don't identify information as confidential when we receive it, we may make it available to the public without notifying you.

B. Will There Be a Public Hearing?

We will hold a public hearing in the Washington, DC area on October 24 and a second public hearing in Denver, CO on October 31. The hearings will start at 9:30 am and continue until everyone has had a chance to speak.

If you would like to present testimony at a public hearing, we ask that you notify the contact person listed above at least ten days before the hearing. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notifications we receive. This schedule will be available on the morning of each hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony.

We will conduct the hearing informally, and technical rules of evidence won't apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

XI. Administrative Requirements

A. Administrative Designation and Regulatory Analysis (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 review by the Office of Management and Budget (OMB) and the requirements of this Executive Order. The Executive Order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A Draft Regulatory Support Document has been prepared and is available in the docket for this rulemaking and at the internet address listed under **ADDRESSES**

above. This action was submitted to the Office of Management and Budget for review under Executive Order 12866. Estimated annual costs of this rulemaking, which proposes standards for engines in four distinct categories, are estimated to be \$184 million per year, thus this proposed rule is considered economically significant. Written comments from OMB and responses from EPA to OMB comments are in the public docket for this rulemaking.

B. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

1. Overview

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meet the definition for business based on SBA size standards (see table below); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The following table provides an overview of the primary SBA small business categories potentially affected by this regulation.

PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS PROPOSED REGULATION

Industry	NAICS ^a codes	Defined by SBA as a small business if ^b
Motorcycles and motorcycle parts manufacturers	336991	<500 employees.
Snowmobile and ATV manufacturers	336999	<500 employees.
Independent Commercial Importers of Vehicles and parts	421110	<100 employees.
Nonroad SI engines	333618	<1,000 employees.
Internal Combustion Engines	333618	<1,000 employees.
Boat Building and Repairing	336612	<500 employees.
Fuel Tank Manufacturers	336211	<1,000 employees.

Notes:

^a North American Industry Classification System

^b According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis.

2. Background

In accordance with Section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact. The IRFA is available for review in the docket and is summarized below.

The process of establishing standards for nonroad engines began in 1991 with a study to determine whether emissions of carbon monoxide (CO), oxides of nitrogen (NO_x), and volatile organic compounds (VOCs) from new and existing nonroad engines, equipment, and vehicles are significant contributors to ozone and CO concentrations in more than one area that has failed to attain the national ambient air quality standards for ozone and CO.¹⁶⁶ In 1994, EPA finalized its finding that nonroad engines as a whole "are significant contributors to ozone or carbon monoxide concentrations" in more than one ozone or carbon monoxide nonattainment area.¹⁶⁷

Upon this finding, the Clean Air Act (CAA or the Act) requires EPA to establish standards for all classes or categories of new nonroad engines that cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide (CO) nonattainment area. Since the finding in 1994, EPA has been engaged in the process of establishing programs to control emissions from nonroad engines used in many different applications. Nonroad categories already regulated include:

- Land-based compression ignition (CI) engines (e.g., farm and construction equipment).
- Small land-based spark-ignition (SI) engines (e.g., lawn and garden equipment, string trimmers).
- Marine engines (outboards, personal watercraft, CI commercial, CI engines <37kW).
- Locomotive engines.

On December 7, 2000, EPA issued an Advance Notice of Proposed Rulemaking (ANPRM). As discussed in the ANPRM, the proposal under development will be a continuation of the process of establishing standards for nonroad engines and vehicles, as required by CAA section 213(a)(3). If, as expected, standards for these engines and vehicles are established, essentially all new nonroad engines will be

required to meet emissions control requirements. The proposal being developed covers compression-ignition recreational marine engines. It also covers several nonroad spark ignition (SI) engine applications, as follows:

- Land-based recreational engines (for example, engines used in snowmobiles, off-highway motorcycles, and all-terrain vehicles (ATVs)),
- Marine sterndrive and inboard (SD/I) engines and boats powered by SI marine engines,¹⁶⁸
- Land-based engines rated over 19 kW (Large SI) (for example, engines used in forklifts); this category includes auxiliary marine engines, which are not used for propulsion.

EPA found that the nonroad engines described above cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide (CO) nonattainment area.¹⁶⁹ CAA section 213(a)(3) requires EPA to establish standards that achieve the greatest degree of emissions reductions achievable taking cost and other factors into account. EPA plans to propose emissions standards and related programs consistent with the requirements of the Act.

In addition to proposing standards for the nonroad vehicles and engines noted above, EPA also intends to review EPA requirements for highway motorcycles. The emissions standards for highway motorcycles were established twenty-three years ago. These standards allow motorcycles to emit about 100 times as much per mile as new cars and light trucks. California recently adopted new emissions standards for highway motorcycles, and new standards and testing cycles are being considered internationally. There may be opportunities to reduce emissions in a cost-effective way.

The program under consideration will cover engines and vehicles that vary in design and use, and many readers may only be interested in one or two of the applications. There are various ways

¹⁶⁸ As a shorthand notation in this document, we are using "recreational marine engines" to mean recreational marine diesel engines and all gasoline SD/I engines, even though some SD/I applications could be commercial. We are similarly using "recreational boats" to mean boats powered by recreational marine diesel engines as well as all boats powered by gasoline engines, even though some gasoline engine-powered boats may be commercial.

¹⁶⁹ See Final Finding, "Control of Emissions from New Nonroad Spark-Ignition Engines Rated above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines" elsewhere in today's Federal Register for EPA's finding for Large SI engines and recreational vehicles. EPA's findings for marine engines are contained in 61 FR 52088 (October 4, 1996) for gasoline engines and 64 FR 73299 (December 29, 1999) for diesel engines.

EPA could group the engines and present information. For purposes of the proposed rule EPA has chosen to group engines by common applications (e.g., recreational land-based engines, marine engines, large spark ignition engines used in commercial applications).

3. Summary of Regulated Small Entities

The small entities directly regulated by this proposed rule are the following:

- a. *Recreational Vehicles (ATVs, snowmobiles, and off-highway motorcycles)*. The ATV sector has the broadest assortment of manufacturers. There are seven companies representing over 95 percent of total domestic ATV sales. The remaining 5 percent come from importers who tend to import inexpensive, youth-oriented ATVs from China and other Asian nations. We have identified 21 small companies that offer off-road motorcycles, ATVs, or both products. Annual unit sales for these companies can range from a few hundred to several thousand units per year.

Based on available industry information, four major manufacturers, Arctic Cat, Bombardier (also known as Ski-Doo), Polaris, and Yamaha, account for over 99 percent of all domestic snowmobile sales. The remaining one percent comes from very small manufacturers who tend to specialize in unique and high performance designs. We have identified three small manufacturers of snowmobiles and one potential small manufacturer who hopes to produce snowmobiles within the next year.

Two of these manufacturers (Crazy Mountain and Fast), plus the potential newcomer (Redline) specialize in high performance versions of standard recreational snowmobile types (i.e., travel and mountain sleds). The other manufacturer (Fast Trax) produces a unique design, which is a scooter-like snowmobile designed to be ridden standing up. Most of these manufacturers build less than 50 units per year.

- b. *Highway Motorcycles*. Of the numerous manufacturers supplying the U.S. market for highway motorcycles, Honda, Harley Davidson, Yamaha, Kawasaki, Suzuki, and BMW are the largest, accounting for 95 percent or more of the total U.S. sales. All of these companies except Harley-Davidson and BMW also manufacture off-road motorcycles and ATVs for the U.S. market. Harley-Davidson is the only company manufacturing highway motorcycles exclusively in the U.S. for the U.S. market.

Since highway motorcycles have had to meet emission standards for the last

¹⁶⁶ "Nonroad Engine and Vehicle Emission Study—Report and Appendices," EPA-21A-201, November 1991 (available in Air docket A-91-24). It is also available through the National Technical Information Service, referenced as document PB 92-126960.

¹⁶⁷ 59 FR 31306 (July 17, 1994).

twenty years, EPA has good information on the number of companies that manufacture or market highway motorcycles for the U.S. market in each model year. In addition to the big six manufacturers noted above, EPA finds as many as several dozen more companies that have operated in the U.S. market in the last couple of model years. Most of these are U.S. companies that are either manufacturing or importing motorcycles, although a few are U.S. affiliates of larger companies in Europe or Asia. Some of the U.S. manufacturers employ only a few people and produce only a handful of custom motorcycles per year, while others may employ several hundred and produce up to several thousand motorcycles per year.

c. Marine Vessels. Marine vessels include the boat, engine, and fuel system. The evaporative emission controls discussed above may affect the boat builders and/or the fuel tank manufacturers. Exhaust emission controls including NTE requirements, as addressed in the August 29, 1999 SBAR Panel Report, would affect the engine manufacturers and may affect boat builders.

EPA has less precise information about recreational boat builders than is available about engine manufacturers. EPA has utilized several sources, including trade associations and Internet sites when identifying entities that build and/or sell recreational boats. EPA has also worked with an independent contractor to assist in the characterization of this segment of the industry. Finally, EPA has obtained a list of nearly 1,700 boat builders known to the U.S. Coast Guard to produce boats using engines for propulsion. At least 1,200 of these companies install engines that use gasoline fueled engines and would therefore be subject to the evaporative emission control program discussed above. More than 90% of the companies identified so far would be considered small businesses as defined by SBA. EPA continues to develop a more complete picture of this segment of the industry and will provide additional information as it becomes available.

Based on information supplied by a variety of recreational boat builders, fuel tanks for boats using SI marine engines are usually purchased from fuel tank manufacturers. However, some boat builders construct their own fuel tanks. The boat builder provides the specifications to the fuel tank manufacturer who helps match the fuel tank for a particular application. It is the boat builder's responsibility to install the fuel tank and connections into their

vessel design. For vessels designed to be used with small outboard engines, the boat builder may not install a fuel tank; therefore, the end user would use a portable fuel tank with a connection to the engine.

EPA has determined that total sales of tanks for gasoline marine applications is approximately 550,000 units per year. The market is broken into manufacturers that produce plastic tanks and manufacturers that produce aluminum tanks. EPA has determined that there are at least seven companies that make plastic fuel tanks with total sales of approximately 440,000 units per year. EPA has determined that there are at least four companies that make aluminum fuel tanks with total sales of approximately 110,000 units per year. All but one of these plastic and aluminum fuel tank manufacturers is a small business as defined under SBA.

EPA has determined that there are at least 16 companies that manufacture CI diesel engines for recreational vessels. Nearly 75 percent of diesel engines sales for recreational vessels in 2000 can be attributed to three large companies. Six of the 16 identified companies are considered small businesses as defined by SBA. Based on sales estimates for 2000, these six companies represent approximately 4 percent of recreational marine diesel engine sales. The remaining companies each comprise between two and seven percent of sales for 2000.

EPA has determined that there are at least 24 companies that manufacture SD/I gasoline engines (including airboats and jet boats) for recreational vessels. Seventeen of the identified companies are considered small businesses as defined by SBA. These 17 companies represent approximately 6 percent of recreational gasoline marine engines sales for 2000. Approximately 70–80 percent of gasoline SD/I engines manufactured in 2000 can be attributed to one company. The next largest company is responsible for about 10–20 percent of 2000 sales.

d. Large Spark Ignition Engines. EPA is aware of one engine manufacturer of Large SI engines that qualifies as a small business. This company plans to produce engines that meet the standards adopted by CARB in 2004, with the possible exception of one engine family. If EPA adopts long-term standards, this would require manufacturers to do additional calibration and testing work. If EPA adopts new test procedures (including transient operation), there may also be a cost associated with upgrading test facilities.

4. Potential Reporting, Record Keeping, and Compliance

For any emission control program, EPA must have assurances that the regulated engines will meet the standards. Historically, EPA programs have included provisions placing manufacturers responsible for providing these assurances. The program that EPA is considering for manufacturers subject to this proposal may include testing, reporting, and record keeping requirements. Testing requirements for some manufacturers may include certification (including deterioration testing), and production line testing. Reporting requirements would likely include test data and technical data on the engines including defect reporting. Manufacturers would likely have to keep records of this information.

5. Related Federal Rules

The Panel is aware of several other current Federal rules that relate to the proposed rule under development. During the Panel's outreach meeting, SERs specifically pointed to Consumer Product Safety Commission (CPSC) regulations covering ATVs, and noted that they may be relevant to crafting an appropriate definition for a competition exclusion in this category. The Panel recommends that EPA continue to consult with the CPSC in developing a proposed and final rule in order to better understand the scope of the Commission's regulations as they may relate to the competition exclusion.

Other SERs, representing manufacturers of marine engines, noted that the U.S. Coast Guard regulates vessel tanks, most notably tank pressure and anti-siphoning requirements for carburetted engines. Tank manufacturers would have to take these requirements into account in designing evaporative control systems. The Panel recommends that EPA continue to work with the Coast Guard to evaluate the safety implications of any proposed evaporative emissions standards and to avoid interference with Coast Guard safety regulations.

The Panel is also aware of other Federal rules that relate to the categories that EPA would address with the proposed rule, but are not likely to affect policy considerations in the rule development process. For example, there are now EPA noise standards covering off-road motorcycles; however, EPA expects that most emission control devices are likely to reduce, rather than increase, noise, and that therefore the noise standards are not likely to be important in developing a proposed rule.

OTAQ is currently developing a proposal that would revise the rule assigning fees to be paid by parties required to certify engines in return for continuing Government oversight and testing. Among other options, EPA could propose to extend the fee structure to several classes of non-road engines for which requirements are being established for the first time under the Recreation Rule. The Panel understands that EPA will carefully examine the potential impacts of the Fees Rule on small businesses. The Panel also notes that EPA's Office of Air Quality, Planning, and Standards (OAQPS) is preparing a Maximum Achievable Control Technology (MACT) standard for Engine Testing Facilities, which is a related matter.

6. Significant Panel Findings

The Panel considered a wide range of options and regulatory alternatives for providing small businesses with flexibility in complying with the proposed emissions standards and related requirements. As part of the process, the Panel requested and received comment on several ideas for flexibility that were suggested by SERs and Panel members. The major options recommended by the Panel are summarized below. The complete set of recommendations can be found in Section 9 of the Panel's full Report.

Many of the flexible approaches recommended by the Panel can be applied to several of the equipment categories that would potentially be affected by the proposed rule EPA is developing. These approaches are identified in Table 1. *First Tier Flexibilities:* Based on consultations with SERs, the Panel believes that the first four provisions in Table 1 are likely to provide the greatest flexibility for many small entities. These provisions are likely to be most valuable because they either provide more time for compliance (e.g., additional leadtime and hardship provisions) or allow for certification of engines based on particular engine designs or certification to other EPA programs. *Second Tier Flexibilities:* The remaining four approaches have the potential to reduce near-term and even long-term costs once a small entity has a product it is preparing to certify. These are important in that the costs of testing multiple engine families, testing a fraction of the production line, and/or developing deterioration factors can be significant. Small businesses could also meet an emission standard on average or generate credits for producing engines which emit at levels below the standard; these credits could then be sold to other

manufacturers for compliance or banked for use in future model years.

During the consultation process, it became evident that, in a few situations, it could be helpful to small entities if unique provisions were available. Five such provisions are described below.

a. Snowmobiles. The Panel recommends EPA seek comment on a provision which would allow small snowmobile manufacturers to petition EPA for a relaxed standard for one or more engine families, up to 300 engines per year, until the family is retired or modified, if such a standard is justifiable based on the criteria described in the Panel report.

b. ATVs and Off-road Motorcycles. The Panel recommends that the hardship provision for ATVs and off-road motorcycles allow hardship relief to be reviewed annually for a period that EPA anticipates will likely be no more than two years in order for importers to obtain complying products.

c. Large SI. The Panel recommends that small entities be granted the flexibility initially to reclassify a small number of their small displacement engines into EPA's small spark-ignition engine program (40 CFR 90). Small entities would be allowed to use those requirements in lieu of the requirements EPA intends to propose for large entities.

d. Marine Vessel Tanks. Most of this sector involves small fuel tank manufacturers and small boat builders. The Panel recommends that the program be structured with longer lead times and an early credit generation program to enable the fuel tank manufacturers to implement controls on tanks on a schedule consistent with their normal turnover of fuel tank molds.

e. Highway Motorcycles. The California Air Resources Board (CARB) has found that California's Tier 2 standard is potentially infeasible for small manufacturers. Therefore, the Panel recommends that EPA delay making decisions on the applicability to small businesses of Tier 2 or other such revisions to the federal regulations until California's 2006 review is complete.

7. Summary of SBREFA Process and Panel Outreach

As required by section 609(b) of the RFA, as amended by SBREFA, EPA conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements.

On May 3, 2001, EPA's Small Business Advocacy Chairperson

convened this Panel under Section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In addition to the Chair, the Panel consisted of the Director of the Assessment and Standards Division (ASD) within EPA's Office of Transportation and Air Quality, the Chief Counsel for Advocacy of the Small Business Administration, and the Deputy Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget. As part of the SBAR process, the Panel met with small entity representatives (SERs) to discuss the potential emission standards and, in addition to the oral comments from SERs, the Panel solicited written input. In the months preceding the Panel process, EPA conducted outreach with small entities from each of the five sectors as described above. On May 18, 2001, the Panel distributed an outreach package to the SERs. On May 30 and 31, 2001, the Panel met with SERs to hear their comments on preliminary alternatives for regulatory flexibility and related information. The Panel also received written comments from the SERs in response to the discussions at this meeting and the outreach materials. The Panel asked SERs to evaluate how they would be affected under a variety of regulatory approaches, and to provide advice and recommendations regarding early ideas for alternatives that would provide flexibility to address their compliance burden.

SERs representing companies in each of the sectors addressed by the Panel raised concerns about the potential costs of complying with the rules under development. For the most part, their concerns were focused on two issues: (1) The difficulty (and added cost) that they would face in complying with certification requirements associated with the standards EPA is developing, and (2) the cost of meeting the standards themselves. SERs observed that these costs would include the opportunity cost of deploying resources for research and development, expenditures for tooling/retooling, and the added cost of new engine designs or other parts that would need to be added to equipment in order to meet EPA emission standards. In addition, in each category, the SERs noted that small manufacturers (and in the case of one category, small importers) have fewer resources and are therefore less well equipped to undertake these new activities and expenditures. Furthermore, because their product lines tend to be smaller,

any additional fixed costs must be recovered over a smaller number of units. Thus, absent any provisions to address these issues, new emission standards are likely to impose much more significant adverse effects on small entities than on their larger competitors.

The Panel discussed each of the issues raised in the outreach meetings and in written comments by the SERs. The Panel agreed that EPA should consider the issues raised by the SERs and that it would be appropriate for EPA to propose and/or request comment on various alternative approaches to address these concerns. The Panel's key discussions centered around the need for and most appropriate types of regulatory compliance alternatives for small businesses. The Panel considered a variety of provisions to reduce the burden of complying with new emission standards and related requirements. Some of these provisions would apply to all companies (e.g., averaging, banking, and trading), while others would be targeted at the unique circumstances faced by small businesses. A complete discussion of the regulatory alternatives recommended by the Panel can be found in the Final Panel Report. Copies of the Final Report can be found in the docket for this rulemaking or at www.epa.gov/sbrefa. Summaries of the Panel's recommended alternatives for each of the sectors subject to this action can be found in the respective sections of the preamble.

As required by section 609(b) of the RFA, as amended by SBREFA, EPA also conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements. EPA's Small Business Advocacy Chairperson convened this on May 3, 2001. In addition to the Chair, the Panel consisted of the Director of the Assessment and Standards Division (ASD) within EPA's Office of Transportation and Air Quality, the Chief Counsel for Advocacy of the Small Business Administration, and the Deputy Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget.

The proposal being developed covers diesel engines used in recreational marine applications. It also covers several nonroad spark ignition (SI) engine applications, as follows:

- Land-based recreational engines (for example, engines used in snowmobiles, off-highway motorcycles, and all-terrain vehicles (ATVs)),

- Marine sterndrive and inboard (SD/I) engines and boats powered by SI marine engines,

- Land-based engines rated over 19 kW (Large SI) (for example, engines used in forklifts); this category includes auxiliary marine engines, which are not used for propulsion.

In addition to the nonroad vehicles and engines noted above, EPA also intends to update EPA requirements for highway motorcycles. Finally, the proposal being developed included evaporative emission control requirements for gasoline fuel tanks and systems used on marine vessels.

The Panel met with Small Entity Representatives (SERs) to discuss the potential emissions standards and, in addition to the oral comments from SERs, the Panel solicited written input. In the months preceding the Panel process, EPA conducted outreach with small entities from each of the five sectors as described above. On May 18, 2001, the Panel distributed an outreach package to the SERs. On May 30 and 31, 2001, the Panel met with SERs to hear their comments on preliminary options for regulatory flexibility and related information. The Panel also received written comments from the SERs in response to the discussions at this meeting and the outreach materials. The Panel asked SERs to evaluate how they would be affected under a variety of regulatory approaches, and to provide advice and recommendations regarding early ideas to provide flexibility. See Section 8 of the Panel Report for a complete discussion of SER comments, and Appendices A and B for summaries of SER oral comments and SER written comments.

Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to the elements of the IRFA. A copy of the Panel report is included in the docket for this proposed rule. The following are Panel recommendations adopted by the Agency. Please note *all* Panel recommendations were adopted for this proposal.

a. *Related Federal Rules.* The Panel recommends that EPA continue to consult with the CPSC in developing a proposed and final rule in order to better understand the scope of the Commission's regulations as they may relate to the competition exclusion. In addition, the Panel recommends that EPA continue to work with the Coast Guard to evaluate the safety implications of any proposed evaporative emissions standards and to avoid interference with Coast Guard safety regulations.

b. *Regulatory Flexibility Alternatives.* The Panel recommends that EPA consider and seek comments on a wide range of alternatives, including the flexibility options described below.

c. *Large SI Engines.* The Panel recommends that EPA propose several possible provisions to address concern that the new EPA standards could potentially place small businesses at a competitive disadvantage to larger entities in the industry. These provisions are described below.

Using Certification and Emissions Standards from Other EPA Programs. The Panel made several recommendations for this provision. First, the Panel recommends that EPA temporarily expand this arrangement to allow small numbers of constant-speed engines up to 2.5 liters (up to 30 kW) to be certified to the Small SI standards. Second, the Panel further recommends that EPA seek comment on the appropriateness of limiting the sales level of 300. Third, the Panel recommends that EPA request comment on the anticipated cap of 30 kW on the special treatment provisions outlined above, or whether a higher cap on power rating is appropriate. Finally, the Panel recommends that EPA propose to allow small-volume manufacturers producing engines up to 30 kW to certify to the small SI standards during the first 3 model years of the program. Thereafter, the standards and test procedures which could apply to other companies at the start of the program would apply to small businesses.

Delay of Proposed Standards. If EPA includes a second phase of standards in its proposal, the Panel recommends that EPA propose to delay the applicability of these standards to small-volume manufacturers for three years beyond the date at which they would generally apply to accommodate the possibility that small companies need to undertake further design work to adequately optimize their designs and to allow them to recover the costs associated with the Phase 1 emission standards that EPA is contemplating.

Production Line Testing. The Panel made several recommendations for this provision. First, the Panel recommends that EPA adopt provisions that allow more flexibility than is available under the California Large SI program or other EPA programs generally to address the concern that production-line testing is another area where small-volume manufacturers typically face a difficult testing burden. Second, the Panel recommends that EPA allow small-volume manufacturers to have a reduced testing rate if they have consistently good test results from

testing production-line engines. Finally, the Panel recommends that EPA allow small-volume manufacturers to use alternative low-cost testing options to show that production-line engines meet emission standards.

Deterioration Factors. The Panel recommends that EPA allow small-volume manufacturers to develop a deterioration factor based on available emissions measurements and good engineering judgement.

Hardship Provision. The Panel recommends that EPA propose two types of hardship provisions for Large SI engines. First the Panel recommends that EPA allow small businesses to petition EPA for additional lead time (e.g., up to 3 years) to comply with the standards. Second, the Panel recommends that EPA allow small businesses to apply for hardship relief if circumstances outside their control cause the failure to comply (i.e., supply contract broken by parts supplier) and if the failure to sell the subject engines would have a major impact on the company's solvency.

d. Off-Road Motorcycles and All-Terrain Vehicles (ATVs). The Panel made the following recommendations for this subcategory.

The Panel recommends that EPA propose to apply the flexibilities described below to engines produced or imported by small entities with combined off-road motorcycle and ATV annual sales of less than 5,000 units per model year.

The Panel recommends that EPA request comment on the appropriateness of the 5,000 unit per model year threshold.

The Panel recommends that EPA request comment on allowing small entities with sales in excess of 5,000 units to certify using the flexible approaches described below for a number of engines equal to their 2000 or 2001 sales level.

The Panel recommends that EPA describe and seek comment on the effect of the proposed standard on these entities, including a request for any data and/or related studies to estimate the extent to which sales of their products are likely to be reduced as a result of changes in product price that are attributable to the proposed standards.

The Panel recommends that, in the final rule, EPA assess any information received in response to this request for purposes of informing the final rule decision making process on whether additional flexibility (beyond that considered in this report) is warranted.

Additional Lead-time to Meet the Proposed Standards. First, the Panel recommends that EPA propose at least

a two year delay, but seek comment on whether a larger time period is appropriate given the costs of compliance for small businesses and the relationship between importers and their suppliers. Second, the Panel recommends that EPA provide additional time for small volume manufacturers to revise their manufacturing process, and would allow importers to change their supply chain to acquire complying products. Third, the Panel recommends that EPA request comment on the appropriate length for a delay (lead-time).

Design Certification. First, the Panel recommends that EPA propose to permit small entities to use design certification. Second, the Panel recommends that EPA work with the Small Entity Representatives and other members of the industry to develop appropriate criteria for such design based certification.

Broaden Engine Families. The Panel recommends that EPA request comment on engine family flexibility and conducting design-based certification emissions testing.

Production Line Testing Waiver. The Panel recommends that EPA propose to provide small manufacturers and small importers a waiver from manufacturer production line testing. The Panel also recommends that EPA request comment on whether limits or the scope of this waiver are appropriate.

Use of Assigned Deterioration Factors During Certification. The Panel recommends that EPA propose to provide small business with the option to use assigned deterioration factors.

Using Certification and Emissions Standards from Other EPA Programs. The Panel recommends that EPA propose to provide small business with this flexibility through the fifth year of the proposed program and request comment on which of the already established standards and programs are believed to be a useful certification option for the small businesses.

Averaging, Banking, and Trading. The Panel recommends that EPA propose to provide small business with the same averaging, banking, and trading program flexibilities proposed for large manufacturers and request comment on how the provisions could be enhanced for small business to make them more useful.

Hardship Provisions. The Panel recommends that EPA propose two types of hardship program for off-road motorcycles and ATVs: (1) EPA should allow small manufacturers and small importers to petition EPA for limited additional lead-time to comply with the standards; and (2) allow small

manufacturers and small importers to apply for hardship relief if circumstances outside their control cause the failure to comply (i.e. supply contract broken by parts supplier) and if failure to sell the subject engines or vehicles would have a major impact on the company's solvency.

The Panel also recommends that EPA propose both aspects of the hardship provisions for small off-road motorcycle and ATV manufacturers and importers and seek comment on the implementation provisions.

e. Marine Vessels. Burden Reduction Approaches Designed for Small Boat Builders and Fuel Tank Manufacturers.

Smooth Transition to Proposed Standards. The Panel recommends that EPA propose an approach that would implement any evaporative standards five years after a regulation for marine engines takes effect. The Panel also recommends that EPA seek comment on this five year period and on whether there are small entities whose product line is dominated by tanks that turn over at a time rate slower time than five years.

Design-Based Certification. The Panel recommends that EPA propose to grant small businesses the option of certifying to the evaporative emission performance requirements based on fuel tank design characteristics that reduce emissions. The Panel also recommends that EPA seek comment on and consider proposing an approach that would allow manufacturers to use this averaging approach with designs other than those listed in the final rule.

ABT of Emission Credits with Design-Based Certification. The Panel recommends that EPA allow manufacturers using design-based certification to generate credits. The Panel also recommends that EPA provide adequately detailed design specifications and associated emission levels for several technology options that could be used to certify.

Broadly Defined Product Certification Families. The Panel recommends that EPA take comment on the need for broadly defined emission families and how these families should be defined.

Hardship Provisions. The Panel recommends that EPA propose two types of hardship programs for marine engine manufacturers and fuel tank manufacturers: (1) Allow small businesses to petition EPA for additional lead time to comply with the standards; and (2) allow small businesses to apply for hardship relief if circumstances outside their control cause the failure to comply (i.e. supply contract broken by parts supplier) and if the failure to sell the subject fuel tanks

or boats would have a major impact on the company's solvency. The Panel also recommends that EPA work with small manufacturers to develop these criteria and how they would be used.

Burden Reduction Approaches
Designed for Small Marine Engines with Respect to NTE Provisions. The Panel recommends that EPA propose to specifically include NTE in this design-based approach, if EPA proposes a standard that includes NTE for small marinizers.

f. Snowmobiles. Delay of Proposed Standards. The Panel recommends that EPA propose to delay the standards for small snowmobile manufacturers by two years from the date at which other manufacturers would be required to comply. The Panel also recommends that EPA propose that the emission standards for small snowmobile manufacturers be phased in over an additional two year (four years to fully implement the standard).

Design-Based Certification. The Panel recommends that EPA take comment on how a design-based certification could be applied to small snowmobile manufacturers and that EPA work with the small entities in the design and implementation of this concept.

Broader Engine Families. The Panel recommends that EPA propose a provision for small snowmobile manufacturers that would use relaxed criteria for what constitutes an engine or vehicle family.

Elimination of Production Line Testing Requirements. The Panel recommends that EPA propose that small snowmobile manufacturers not be subject to production line testing requirements.

Use of Assigned DF During Certification. The Panel recommends that EPA propose to allow small snowmobile manufacturers to elect to use deterioration factors determined by EPA to demonstrate end of useful life emission levels, thus reducing development/testing burden rather than performing a durability demonstration for each engine family as part of the certification testing requirement.

Using Certification and Emission Standards from Other EPA Programs. If the manufacturer were to change the bore or stroke of the engine, it is likely that the engine would no longer qualify as emissions could increase, allow this option for small snowmobile manufacturers.

Averaging, Banking and Trading. The Panel recommends that EPA propose an averaging, banking and trading program for snowmobiles, and seek comment on additional ABT flexibilities it should

consider for small snowmobile manufacturers.

Hardship Provisions. The Panel recommends that EPA propose two types of hardship programs for small snowmobile manufacturers: (1) Allow small snowmobile manufacturers to petition EPA for additional lead time to comply with the standards; and (2) allow small snowmobile manufacturers to apply for hardship relief if circumstances outside their control cause the failure to comply (i.e. supply contract broken by parts supplier) and if failure to sell the subject engines or vehicles would have a major impact on the company's solvency.

Unique Snowmobile Engines. The Panel recommends that EPA seek comment on an additional provision, which would allow a small snowmobile manufacturer to petition EPA for relaxed standards for one or more engine families. The Panel also recommends that EPA allow a provision for EPA to set an alternative standard at a level between the prescribed standard and the baseline level until the engine family is retired or modified in such a way as to increase emission and for the provision to be extended for up to 300 engines per year per manufacturer would assure it is sufficiently available for those manufacturers for whom the need is greatest. Finally, the Panel recommends that EPA seek comment on initial and deadline dates for the submission of such petitions.

g. Highway Motorcycles. The Panel recommends that EPA include the flexibilities described below for small entities with highway motorcycle annual sales of less than 3,000 units per model year (combined Class I, II, and III motorcycles) and fewer than 500 employees.

Delay of Proposed Standards. The Panel recommends that EPA propose to delay compliance with the Tier 1 standard of 1.4 g/km HC+NO_x until the 2008 model year for small volume manufacturers. The Panel also recommends that EPA seek comment on whether additional time is needed for small businesses to comply with the Federal program. The Panel recommends that EPA participate with CARB in the 2006 progress review as these provisions are revisited, and delay making decisions on the applicability to small businesses of Tier 2 or other revisions to the federal regulations that are appropriate following the review. The Panel also recommends that any potential Tier 2 requirements for small manufacturer motorcycles consider potential test procedure changes arising from the ongoing World Motorcycle Test

Cycle work described in the Panel Report.

Broader Engine Families. The Panel recommends that EPA deep the current existing regulations for small volume highway motorcycle manufacturers.

Exemption from Production Line Testing. The Panel recommends that EPA keep the current provisions for no mandatory production line testing requirement for highway motorcycles and allow the EPA to request production vehicles from any certifying manufacturer for testing.

Averaging, Banking, and Trading (ABT). The Panel recommends that EPA propose an ABT program for highway motorcycles.

Hardship Provisions. The Panel recommends that EPA propose two types of hardship programs for highway motorcycles: (1) Allow small businesses to petition EPA for additional lead time to comply with the standards; and (2) allow small businesses to apply for hardship relief if circumstances outside their control cause the failure to comply (i.e. supply contract broken by parts supplier) and if failure to sell the subject engines or vehicles would have a major impact on the company's solvency. The Panel also recommends that EPA request comment on the California requirements, which do not include hardship provisions.

Reduced Certification Data Submittal and Testing Requirements. The Panel recommends that EPA keep current EPA regulations allow significant flexibility for certification by manufacturers who project fewer than 10,000 unit sales of combined Class I, II, and III motorcycles.

We invite comments on all aspects of the proposal and its impacts on small entities.

C. Paperwork Reduction Act

The information collection requirements (ICR) in this proposed 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.* We will announce in a separate **Federal Register** Notice that the ICR has been submitted to OMB and will take comments on the proposed ICR at that time.

The Agency may not conduct or sponsor an information collection, and a person is not required to respond to a request for information, unless the information collection request displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. EPA believes that the proposal represents the least costly, most cost-effective approach to achieve the air quality goals of the rule. The costs and benefits associated with the proposal are discussed in Section IX

and in the Draft Regulatory Support Document, as required by the UMRA.

2. Consultation and Coordination With Indian Tribal Governments (Executive Order 13084)

On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, the proposed rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084. Development of the final rule will address tribal considerations under Executive Order 13175.

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

This proposal does not significantly or uniquely affect the communities of Indian Tribal governments. The proposed emission standards and other related requirements for private businesses in this proposal would have national applicability, and thus would not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this proposal. Thus, EPA's conclusions regarding the impacts from the implementation of this proposed rule discussed in the other sections are equally applicable to the communities of Indian Tribal governments. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

E. National Technology Transfer and Advancement Act

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

This proposed rule involves technical standards. The following paragraphs describe how we specify testing procedures for engines subject to this proposal.

The International Organization for Standardization (ISO) has a voluntary consensus standard that can be used to test Large SI engines. However, the current version of that standard (ISO 8178) is applicable only for steady-state testing, not for transient testing. As described in the Draft Regulatory Support Document, transient testing is an important part of the proposed emission-control program for these engines. We are therefore not proposing to adopt the ISO procedures in this rulemaking.

Underwriters Laboratories (UL) has adopted voluntary consensus standards for forklifts that are relevant to the proposed requirements for Large SI engines. UL sets a maximum temperature specification for gasoline and, for forklifts used in certain applications, defines requirements to avoid venting from gasoline fuel tanks. We are proposing a different temperature limit, because the maximum temperature specified by UL does not prevent fuel boiling. We are proposing separate measures to address venting of gasoline vapors, because of UL's provisions to allow venting with an orifice up to 1.78 mm (0.070 inches). We believe forklifts with such a vent would have unnecessarily high evaporative emissions. If the UL standard is revised to address these technical concerns, the UL standards would be appropriate to reference in our regulations. An additional concern relates to the fact that the UL requirements apply only to forklifts (and not all forklifts in the case of the restriction on vapor venting). EPA

regulations would therefore need to, at a minimum, extend any published UL standards to other engines and equipment to which the UL standards would otherwise not apply.

We are proposing to test off-highway motorcycles and all-terrain vehicles with the Federal Test Procedure, a chassis-based transient test. There is no voluntary consensus standard that would adequately address engine or vehicle operation for suitable emission measurement. Furthermore, we are interested in pursuing an engine-based test procedure for all-terrain vehicles. We would need to develop a new duty cycle for this, because there is no acceptable engine duty cycle today that would adequately represent the way these engines operate. For snowmobiles, we are proposing test procedures based on work that has been published, but not yet adopted as a voluntary consensus standard.

For recreational marine diesel engines, we are proposing the same test procedures that we have adopted for commercial marine diesel engines (with a new duty cycle appropriate for recreational applications). We are again proposing these procedures in place of the ISO 8178 standard that would apply to these engines. We believe that ISO 8178 relies too heavily on reference testing conditions. Because our test procedures need to represent in-use operation typical of operation in the field, they must be based on a range of ambient conditions. We determined that the ISO procedures are not broadly usable in their current form, and therefore should not be adopted by reference. We remain hopeful that future ISO test procedures will be developed that are usable and accurate for the broad range of testing needed, and that such procedures could then be adopted. We expect that any such development of revised test procedures will be done in accordance with ISO procedures and in a balanced and transparent manner that includes the involvement of all interested parties, including industry, U.S. EPA, foreign government organizations, state governments, and environmental groups. In so doing, we believe that the resulting procedures would be "global" test procedures that can facilitate the free flow of international commerce for these products.

F. Protection of Children (Executive Order 13045)

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically

significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5-501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish the NAAQS for these pollutants, and EPA is not revisiting those issues here. EPA believes, however, that the emission reductions from the strategies proposed in this rulemaking will further reduce air toxics and the related adverse impacts on children's health.

G. Federalism (Executive Order 13132)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have

federalism implications (i.e., the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of various State and local governments in developing this rule. EPA has also consulted representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

H. Energy Effects (Executive Order 13211)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The proposed standards have for their aim the reduction of emission from certain nonroad engines, and have no effect on fuel formulation, distribution, or use. Generally, the proposed program leads to reduced fuel usage due to the improvements in engine control technologies.

I. Plain Language

This document follows the guidelines of the June 1, 1998 Executive Memorandum on Plain Language in Government Writing. To read the text of

the regulations, it is also important to understand the organization of the Code of Federal Regulations (CFR). The CFR uses the following organizational names and conventions.

Title 40—Protection of the Environment
Chapter I—Environmental Protection Agency

Subchapter C—Air Programs. This contains parts 50 to 99, where the Office of Air and Radiation has usually placed emission standards for motor vehicle and nonroad engines.

Subchapter U—Air Programs Supplement. This contains parts 1000 to 1299, where we intend to place regulations for air programs in future rulemakings.

Part 1048—Control of Emissions from New, Large, Nonrecreational, Nonroad Spark-ignition Engines. Most of the provisions in this part apply only to engine manufacturers.

Part 1051—Control of Emissions from Recreational Engines and Vehicles.

Part 1065—General Test Procedures for Engine Testing. Provisions of this part apply to anyone who tests engines to show that they meet emission standards.

Part 1068—General Compliance Provisions for Engine Programs. Provisions of this part apply to everyone.

Each part in the CFR has several subparts, sections, and paragraphs. The following illustration shows how these fit together.

Part 1048
Subpart A
Section 1048.001
(a)
(b)
(1)
(2)
(i)
(ii)
(A)
(B)

A cross reference to § 1048.001(b) in this illustration would refer to the parent paragraph (b) and all its subordinate paragraphs. A reference to “§ 1048.001(b) introductory text” would refer only to the single, parent paragraph (b).

List of Subjects

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Parts 91 and 1051

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

40 CFR Parts 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

40 CFR Part 1048

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 1065

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements, Research.

40 CFR Part 1068

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: September 14, 2001.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

1. The authority for part 89 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

2. Section 89.2 is amended by adding definitions for “Aircraft” and “Spark-ignition” in alphabetic order and revising the definition of “Compression-ignition” to read as follows:

§ 89.2 Definitions.

* * * * *

Aircraft means any vehicle capable of sustained air travel above treetop heights.

* * * * *

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

* * * * *

Spark-ignition means relating to a type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

* * * * *

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES AT OR BELOW 19 KILOWATTS

3. The heading to part 90 is revised to read as set forth above.

4. The authority for part 90 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

5. Section 90.1 is revised to read as follows:

§ 90.1 Applicability.

(a) This part applies to new nonroad spark-ignition engines and vehicles with gross power output at or below 19 kilowatts (kW) used for any purpose, unless we exclude them under paragraph (c) of this section.

(b) This part also applies to engines with a gross power output above 19 kW if the manufacturer uses the provisions of 40 CFR 1048.615 or 1048.145 to exempt them from the requirements of 40 CFR part 1048. Compliance with the provisions of this part is a required condition of that exemption.

(c) The following nonroad engines and vehicles are not subject to the provisions of this part:

(1) Engines used in snowmobiles, all-terrain vehicles, or off-highway motorcycles and regulated in 40 CFR part 1051. This part nevertheless applies to engines used in all-terrain vehicles or off-highway motorcycles if the manufacturer uses the provisions of 40 CFR 1051.615 to exempt them from the requirements of 40 CFR part 1051. Compliance with the provisions of this part is a required condition of that exemption.

(2) Engines used in highway motorcycles. See 40 CFR part 86, subpart E.

(3) Propulsion marine engines. See 40 CFR parts 91 and 1045. This part applies with respect to auxiliary marine engines.

(4) Engines used in aircraft. See 40 CFR part 87.

(5) Engines certified to meet the requirements of 40 CFR part 1048.

(6) Hobby engines.

(7) Engines that are used exclusively in emergency and rescue equipment where no certified engines are available to power the equipment safely and practically, but not including generators, alternators, compressors or pumps used to provide remote power to a rescue tool. The equipment manufacturer bears the responsibility to ascertain on an annual basis and maintain documentation available to the Administrator that no appropriate certified engine is available from any source.

(d) Engines subject to the provisions of this subpart are also subject to the provisions found in subparts B through N of this part, except that subparts C, H, M and N of this part apply only to Phase 2 engines as defined in this subpart.

(e) Certain text in this part is identified as pertaining to Phase 1 or Phase 2 engines. Such text pertains only to engines of the specified Phase. If no indication of Phase is given, the text pertains to all engines, regardless of Phase.

6. Section 90.2 is amended by adding a new paragraph (c) to read as follows:

§ 90.2 Effective dates.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, engines used in recreational vehicles with engine rated speed greater than or equal to 5,000 rpm and with no installed speed governor are not subject to the provisions of this part through the 2005 model year. Starting with the 2006 model year, all

the requirements of this part apply to engines used in these vehicles if they are not included in the scope of 40 CFR part 1051.

7. Section 90.3 is amended by adding definitions for "Aircraft", "Hobby engines", "Marine engine", "Marine vessel", "Recreational", and "United States" in alphabetical order, to read as follows:

§ 90.3 Definitions.

* * * * *

Aircraft means any vehicle capable of sustained air travel above treetop heights.

* * * * *

Hobby engines means engines used in reduced-scale models of vehicles that are not capable of transporting a person (for example, model airplanes).

Marine engine means an engine that someone installs or intends to install on a marine vessel.

Marine vessel means a vehicle that is capable of operation in water but is not capable of operation out of water. Amphibious vehicles are not marine vessels.

* * * * *

Recreational means, for purposes of this part, relating to a vehicle intended by the vehicle manufacturer to be operated primarily for pleasure. Note that snowmobiles, all-terrain vehicles, and off-highway motorcycles are recreational vehicles that we regulate under 40 CFR part 1051.

* * * * *

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * *

Subpart B—[Amended]

8. Section 90.103 is amended by redesignating paragraph (a)(2)(v) as

paragraph (a)(2)(vi) and adding a new paragraph (a)(2)(v) to read as follows:

§ 90.103 Exhaust emission standards.

(a) * * *

(2) * * *

(v) The engine must be used in a recreational application, with a combined total vehicle dry weight under 20 kilograms;

* * * * *

PART 91—CONTROL OF EMISSIONS FROM MARINE SPARK-IGNITION ENGINES

9. The authority for part 91 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

10. Section 91.3 is amended by adding the definition for United States in alphabetical order to read as follows:

§ 91.3 Definitions.

* * * * *

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * *

Subpart E—[Amended]

11. Section 91.419 is amended in paragraph (b) by revising the equations for $M_{HC_{exh}}$ and M_{exh} to read as follows:

§ 91.419 Raw emission sampling calculations.

* * * * *

(b) * * *

$$M_{HC_{exh}} = 12.01 + 1.008 \times \alpha$$

* * * * *

$$M_{exh} = \frac{M_{HC_{exh}} \times WHC}{10^6} + \frac{28.01 \times WCO}{10^2} + \frac{44.1 \times WCO_2}{10^2} + \frac{46.01 \times WNO_x}{10^6} + \frac{2.016 \times WH_2}{10^2} + 18.01 \times (1 - K) + 28.01 \times \left[\frac{100 - \frac{WHC}{10^4} - WCO - WCO_2 - \frac{WNO_x}{10^4} - WH_2 - 100 \times (1 - K)}{10^2} \right]$$

* * * * *

Subpart G—[Amended]

12. Appendix A to Subpart G of part 91 is amended by revising Table 1 to read as follows:

**Appendix A to Subpart G of Part 91—
Sampling Plans for Selective
Enforcement Auditing of Marine
Engines**

TABLE 1.—SAMPLING PLAN CODE LETTER

Annual engine family sales	Code letter
20–50	AA ¹
20–99	A ¹
100–299	B
300–499	C
500 or greater	D

¹ A manufacturer may optionally use either the sampling plan for code letter "AA" or sampling plan for code letter "A" for Selective Enforcement Audits of engine families with annual sales between 20 and 50 engines. Additional, the manufacturers may switch between these plans during the audit.

* * * * *

Subpart I—[Amended]

13. Section 91.803 is amended by revising paragraph (a) to read as follows:

§ 91.803 Manufacturer in-use testing program.

(a) EPA shall annually identify engine families and those configurations within families which the manufacturers must then subject to in-use testing. For each model year, EPA may identify the following number of engine families for testing, based on the manufacturer's total number of engine families to which this subpart is applicable produced in that model year:

(1) For manufactures with three or fewer engine families, EPA may identify a single engine family.

(2) For manufacturers with four or more engine families, EPA may identify a number of engine families that is no greater than twenty-five percent of the manufacturer's total number of engine families.

* * * * *

PART 94—CONTROL OF EMISSIONS FROM MARINE COMPRESSION-IGNITION ENGINES

14. The heading to part 94 is revised to read as set forth above.

15. The authority citation for part 94 continues to read as follows:

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a).

Subpart A—[Amended]

16. Section 94.1 is revised to read as follows:

§ 94.1 Applicability.

(a) Except as noted in paragraphs (b) and (c) of this section, the provisions of this part apply to manufacturers (including post-manufacture marinizers and dressers), rebuilders, owners and operators of:

(1) Marine engines that are compression-ignition engines manufactured (or that otherwise become new) on or after January 1, 2004;

(2) Marine vessels manufactured (or that otherwise become new) on or after January 1, 2004 and which include a compression-ignition marine engine.

(b) Notwithstanding the provision of paragraph (c) of this section, the requirements and prohibitions of this part do not apply to three types of marine engines:

- (1) Category 3 marine engines;
- (2) Marine engines with rated power below 37 kW; or
- (3) Marine engines on foreign vessels.

(c) The provisions of Subpart L of this part apply to everyone with respect to the engines identified in paragraph (a) of this section.

17. Section 94.2 is amended by revising paragraph (b) introductory text, removing the definition for "Commercial marine engine", revising definitions for "Compression-ignition", "Designated officer", "Passenger", "Recreational marine engine", "Recreational vessel", and "United States", and adding new definitions for "Commercial", "Small-volume boat builder", "Small-volume manufacturer", and "Spark-ignition" in alphabetical order to read as follows:

§ 94.2 Definitions.

* * * * *

(b) As used in this part, all terms not defined in this section shall have the meaning given them in the Act:

* * * * *

Commercial means relating to an engine or vessel that is not a recreational marine engine or a recreational vessel.

* * * * *

Compression-ignition means relating to an engine that is not a *spark-ignition* engine.

* * * * *

Designated Officer means the Manager, Engine Programs Group (6403-), U.S. Environmental Protection

Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

* * * * *

Passenger has the meaning given by 46 U.S.C. 2101 (21) and (21a). This generally means that a passenger is a person that pays to be on the vessel.

* * * * *

Recreational marine engine means a Category 1 propulsion marine engine that is intended by the manufacturer to be installed on a recreational vessel, and which is permanently labeled as follows: "THIS ENGINE IS CATEGORIZED AS A RECREATIONAL MARINE ENGINE UNDER 40 CFR PART 94. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY."

Recreational vessel has the meaning given in 46 U.S.C 2101 (25), but excludes "passenger vessels" and "small passenger vessels" as defined by 46 U.S.C. 2101 (22) and (35) and excludes vessels used solely for competition. In general, for this part, "recreational vessel" means a vessel that is intended by the vessel manufacturer to be operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure, excluding the following vessels:

(1) Vessels of less than 100 gross tons that carry more than 6 passengers (as defined in this section).

(2) Vessels of 100 gross tons or more that carry one or more passengers (as defined in this section).

(3) Vessels used solely for competition.

* * * * *

Small-volume boat builder means a boat manufacturer with fewer than 500 employees and with annual U.S.-directed production of fewer than 100 boats. For manufacturers owned by a parent company, these limits apply to the combined production and number of employees of the parent company and all its subsidiaries.

Small-volume manufacturer means a manufacturer with annual U.S.-directed production of fewer than 1,000 internal combustion engines (marine and nonmarine). For manufacturers owned by a parent company, the limit applies to the production of the parent company and all its subsidiaries.

Spark-ignition means relating to a type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate

intake air flow to control power during normal operation.

* * * * *

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * *

18. Section 94.7 is amended by revising paragraph (e) to read as follows:

§ 94.7 General standards and requirements.

* * * * *

(e) Electronically controlled engines subject to the emission standards of this part shall broadcast on engine's controller area networks engine torque (as percent of maximum at that speed) and engine speed.

19. Section 94.8 is amended by revising paragraphs (a), (e), (f) introductory text, and (f)(1) to read as follows:

§ 94.8 Exhaust emission standards.

(a) Exhaust emissions from marine compression-ignition engines shall not exceed the applicable exhaust emission standards contained in Table A-1 as follows:

TABLE A-1.—PRIMARY TIER 2 EXHAUST EMISSION STANDARDS (g/kW-hr)

Engine size liters/cylinder, rated power	Category	Model year ^a	THC+ NO _x g/kW-hr	CO g/kW-hr	PM g/kW-hr
disp. < 0.9 and power ≥ 37 kW	Category 1 Commercial	2005	7.5	5.0	0.40
	Category 1 Recreational 1	2007	7.5	5.0	0.40
0.9 ≤ disp. < 1.2 all power levels	Category 1 Commercial	2004	7.2	5.0	0.30
	Category 1 Recreational	2006	7.2	5.0	0.30
1.2 ≤ disp. < 2.5 all power levels	Category 1 Commercial	2004	7.2	5.0	0.20
	Category 1 Recreational	2006	7.2	5.0	0.20
2.5 ≤ disp. < 5.0 all power levels	Category 1 Commercial	2007	7.2	5.0	0.20
	Category 1 Recreational	2009	7.2	5.0	0.20
5.0 ≤ disp. < 15.0 all power levels	Category 2	2007	7.8	5.0	0.27
15.0 ≤ disp. < 20.0 power < 3300 kW	Category 2	2007	8.7	5.0	0.50
15.0 ≤ disp. < 20.0 power ≥ 3300 kW	Category 2	2007	9.8	5.0	0.50
20.0 ≤ disp. < 25.0 all power levels	Category 2	2009	9.8	5.0	0.50
25.0 ≤ disp. < 30.0	Category 2	2007	11.0	5.0	0.50

^a The model years listed indicate the model years for which the specified standards start.

* * * * *

(e) Exhaust emissions from propulsion engines subject to the standards (or FELs) in paragraph (a), (c), or (f) of this section shall not exceed:

(1) *Commercial marine engines.* (i) 1.20 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106 at loads greater than or equal to 45 percent of the maximum power at rated speed or 1.50 times the applicable standards (or FELs) at loads less than 45 percent of the maximum power at rated speed.

(ii) As an option, the manufacturer may choose to comply with limits of 1.25 times the applicable standards (or FELs) when tested over the whole power range in accordance with the supplemental test procedures specified in § 94.106, instead of the limits in paragraph (e)(1)(i) of this section.

(2) *Recreational marine engines.* (i) 1.20 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106 at loads greater than or equal to 45 percent of the maximum power at rated speed and

speeds less than 95 percent of maximum test speed, or 1.50 times the applicable standards (or FELs) at loads less than 45 percent of the maximum power at rated speed, or 1.50 times the applicable standards (or FELs) at any loads for speeds greater than or equal to 95 percent of the maximum test speed.

(ii) As an option, the manufacturer may choose to comply with limits of 1.25 times the applicable standards (or FELs) when tested over the whole power range in accordance with the supplemental test procedures specified in § 94.106, instead of the limits in paragraph (e)(2)(i) of this section.

(f) The following defines the requirements for low emitting Blue Sky Series engines:

(1) *Voluntary standards.* Engines may be designated "Blue Sky Series" engines through the 2010 model year by meeting the voluntary standards listed in Table A-2, which apply to all certification and in use testing, as follows:

TABLE A-2.—VOLUNTARY EMISSION STANDARDS (g/kW-hr)

Rated brake power (kW)	THC+ NO _x	PM
Power ≥ 37 kW, and displ.<0.9	4.0	0.24
0.9≤displ.<1.2	4.0	0.18
1.2≤displ.<2.5	4.0	0.12
2.5≤displ.<5	5.0	0.12
5≤displ.<15	5.0	0.16
15 ≤ disp. < 20, and power < 3300 kW	5.2	0.30
15 ≤ disp. < 20, and power ≥ 3300 kW	5.9	0.30
20 ≤ disp. < 25	5.9	0.30
25 ≤ disp. < 30	6.6	0.30

* * * * *

20. Section 94.9 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 94.9 Compliance with emission standards.

(a) The general standards and requirements in § 94.7 and the emission standards in § 94.8 apply to each new engine throughout its useful life period. The useful life is specified both in years and in hours of operation, and ends when either of the values (hours of operation or years) is exceeded.

(1) The minimum useful life is:

(i) 10 years or 1,000 hours of operation for recreational Category 1 engines;

(ii) 10 years or 10,000 hours of operation for commercial Category 1 engines;

(iii) 10 years or 20,000 hours of operation for Category 2 engines.

* * * * *

21. Section 94.12 is amended by revising the introductory text and paragraphs (a) and (b)(1) and adding a new paragraph (f) to read as follows:

§ 94.12 Interim provisions.

This section contains provisions that apply for a limited number of calendar years or model years. These provisions apply instead of the other provisions of this part.

(a) *Compliance date of standards.*

Certain companies may delay compliance with emission standards. Companies wishing to take advantage of this provision must inform the Designated Officer of their intent to do so in writing before the date that compliance with the standards would otherwise be mandatory.

(1) Post-manufacture marinizers may elect to delay the model year of the Tier 2 standards for commercial engines as specified in § 94.8 by one year for each engine family.

(2) Small-volume manufacturers may elect to delay the model year of the Tier

2 standards for recreational engines as specified in § 94.8 by five years for each engine family.

(b) *Early banking of emission credits.*

(1) A manufacturer may optionally certify engines manufactured before the date the Tier 2 standards take effect to earn emission credits under the averaging, banking, and trading program. Such optionally certified engines are subject to all provisions relating to mandatory certification and enforcement described in this part. Manufacturers may begin earning credits for recreational engines on [date 30 days after publication of the final rule in the Federal Register].

* * * * *

(f) *Flexibility for small-volume boat builders.* Notwithstanding the other provisions of this part, manufacturers may sell uncertified recreational engines to small-volume boat builders during the first five years for which the emission standards in § 94.8 apply, subject to the following provisions:

(1) The U.S.-directed production volume of boats from any small-volume boat builder using uncertified engines during the total five-year period may not exceed 80 percent of the manufacturer's average annual production for the three years prior to the general applicability of the recreational engine standards in § 94.8, except as allowed in paragraph (f)(2) of this section.

(2) Small-volume boat builders may exceed the production limits in paragraph (f)(1) of this section, provided it does not exceed 20 boats during the five-year period or 10 boats in any single calendar year. This does not apply to boats powered by engines with displacement greater than 2.5 liters per cylinder.

(3) Small-volume boat builders must keep records of all the boats and engines

produced under this paragraph (f), including boat and engine model numbers, serial numbers, and dates of manufacture. Records must also include information verifying compliance with the limits in paragraph (f)(1) or (f)(2) of this section. Keep these records until at least two full years after you no longer use the provisions in this paragraph (f).

Subpart B—[Amended]

22. Section 94.104 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 94.104 Test procedures for Category 2 marine engines.

* * * * *

(c) Conduct testing at ambient temperatures from 13° C to 30° C.

23. Section 94.105 is amended by revising paragraph (b) text preceding Table B-1, revising “#” to read “±” in footnotes 1 and 2 in the tables in paragraphs (b), (c)(1), (c)(2), and (d)(1), and adding a new paragraph (e) to read as follows:

§ 94.105 Duty cycles.

* * * * *

(b) *General cycle.* Propulsion engines that are used with (or intended to be used with) fixed-pitch propellers, and any other engines for which the other duty cycles of this section do not apply, shall be tested using the duty cycle described in the following Table B-1:

* * * * *

(e) *Recreational.* For the purpose of determining compliance with the emission standards of § 94.8, recreational engines shall be tested using the duty cycle described in Table B-5, which follows:

TABLE B-5.—RECREATIONAL MARINE DUTY CYCLE

Mode No.	Engine speed ¹ (percent of maximum test speed)	Percent of maximum test power ²	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.08
2	91	75	5.0	0.13
3	80	50	5.0	0.17
4	63	25	5.0	0.32
5	idle	0	5.0	0.30

¹ Engine speed: ± 2 percent of point.

² Power: ±2 percent of engine maximum value.

24. Section 94.106 is amended by revising paragraphs (b) introductory

text, (b)(1) introductory text, (b)(2) introductory text, and (b)(3)

introductory text and adding a new paragraph (b)(5) to read as follows:

§ 94.106 Supplemental test procedures.

* * * * *

(b) The specified Not to Exceed Zones for marine engines are defined as follows. These Not to Exceed Zones apply, unless a modified zone is established under paragraph (c) of this section.

(1) For commercial Category 1 engines certified using the duty cycle specified in § 94.105(b), the Not to Exceed zones are defined as follows:

* * * * *

(2) For Category 2 engines certified using the duty cycle specified in

§ 94.105(b), the Not to Exceed zones are defined as follows:

* * * * *

(3) For engines certified using the duty cycle specified in § 94.105(c)(2), the Not to Exceed zones are defined as follows:

* * * * *

(5) For recreational marine engines certified using the duty cycle specified in § 94.105(e), the Not to Exceed zones are defined as follows:

(i) The Not to Exceed zone is the region between the curves $\text{power} = 1.15 \times \text{SPD}^2$ and $\text{power} = 0.85 \times \text{SPD}^4$, excluding all operation below 25% of

maximum power at rated speed and excluding all operation below 63% of maximum test speed.

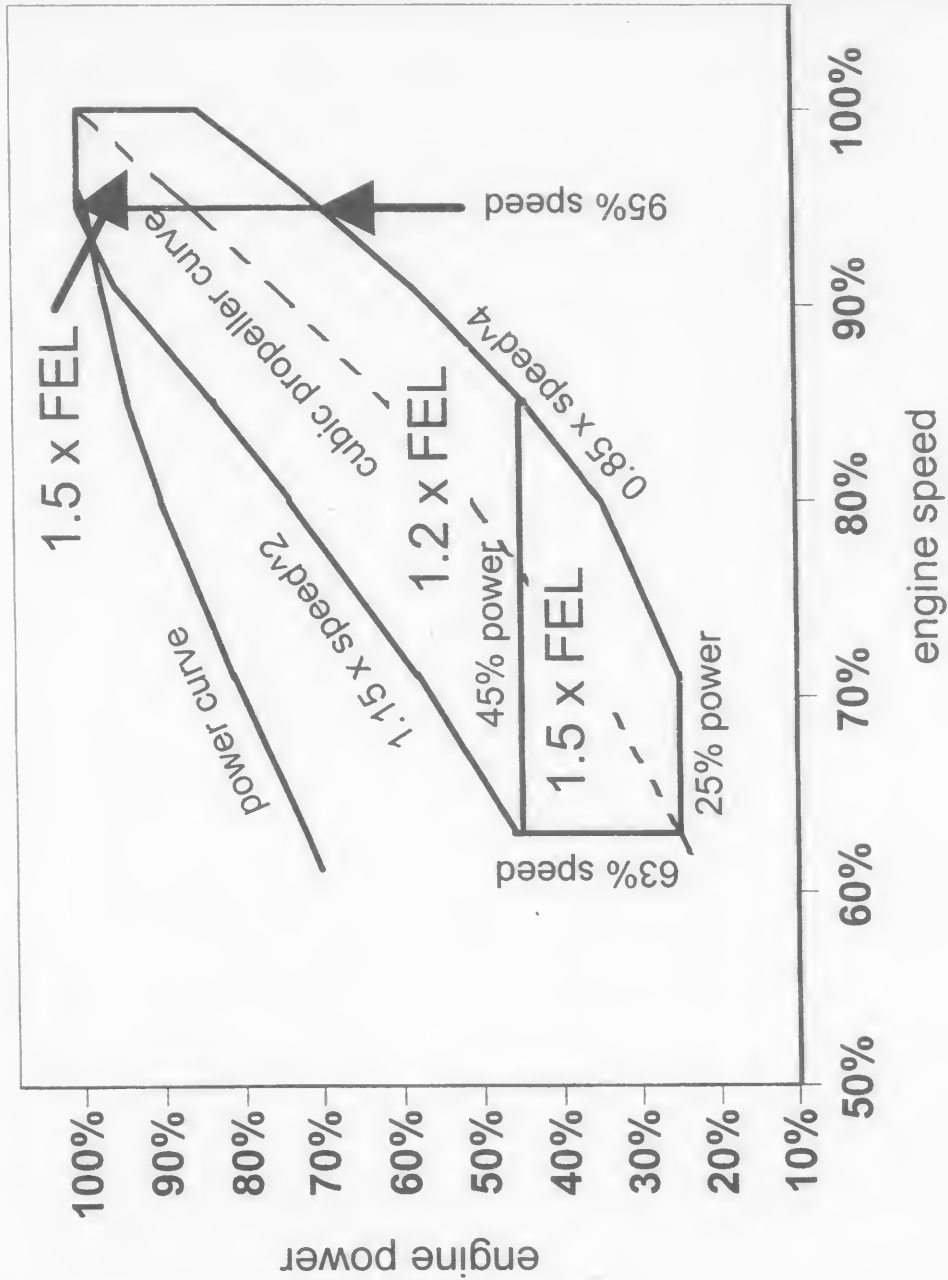
(ii) This zone is divided into three subzones, one below 45% of maximum power at maximum test speed; one above 95% of maximum test speed; and a third area including all of the remaining area of the NTE zone.

(iii) SPD in paragraph (b)(3)(i) of this section refers to percent of maximum test speed.

(iv) See Figure B-4 for an illustration of this Not to Exceed zone as follows:

BILLING CODE 6560-50-P

Figure B-4



BILLING CODE 6560-50-C

25. Section 94.108 is amended in paragraph (a)(1) by revising footnote 1 in Table B-5 to read as follows:

§ 94.108 Test fuels.

(a) * * * (1) * * *

TABLE B-5.—FEDERAL TEST FUEL SPECIFICATIONS

TABLE B-5.—FEDERAL TEST FUEL SPECIFICATIONS—Continued

.
¹ All ASTM procedures in this table have been incorporated by reference. See § 94.5.				
*	*	*	*	*

Subpart C—[Amended]

26. Section 94.203 is amended by revising paragraphs (d)(14) and (d)(16) to read as follows:

§ 94.203 Application for certification.

* * * * *

(d) * * *

(14) A statement that all the engines included in the engine family comply with the Not To Exceed standards

specified in § 94.8(e) when operated under all conditions which may reasonably be expected to be encountered in normal operation and use; the manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

(16) A statement indicating duty-cycle and application of the engine (e.g., used to propel planing vessels, use to propel vessels with variable-pitch propellers, constant-speed auxiliary, recreational, etc.).

27. Section 94.204 is amended by removing "and" at the end of paragraph (b)(9), adding "; and" at the end of paragraph (b)(10), adding a new paragraph (b)(11), and revising paragraph (e) to read as follows:

§ 94.204 Designation of engine families.

(b) Class (commercial or recreational).

(e) Upon request by the manufacturer, the Administrator may allow engines that would be required to be grouped into separate engine families based on the criteria in paragraph (b) or (c) of this section to be grouped into a single engine family if the manufacturer demonstrates that the engines will have similar emission characteristics; however, recreational and commercial engines may not be grouped in the same engine family. This request must be accompanied by emission information supporting the appropriateness of such combined engine families.

28. Section 94.209 is revised to read as follows:

§ 94.209 Special provisions for post-manufacture marinizers and small-volume manufacturers.

(a) *Broader engine families.* Instead of the requirements of § 94.204, an engine family may consist of any engines subject to the same emission standards. This does not change any of the requirements of this part for showing that an engine family meets emission standards. To be eligible to use the provisions of this paragraph (a), the manufacturer must demonstrate one of the following:

- (1) It is a post-manufacture marinizer and that the base engines used for modification have a valid certificate of conformity issued under 40 CFR part 89 or 40 CFR part 92 or the heavy-duty engine provisions of 40 CFR part 86.
- (2) It is a small-volume manufacturer.

(b) *Hardship relief.* Post-manufacture marinizers, small-volume manufacturers, and small-volume boat builders may take any of the otherwise prohibited actions identified in § 94.1103(a)(1) if approved in advance by the Administrator, subject to the following requirements:

(1) Application for relief must be submitted to the Designated Officer in writing prior to the earliest date in which the applying manufacturer would be in violation of § 94.1103. The manufacturer must submit evidence showing that the requirements for approval have been met.

(2) The conditions causing the impending violation must not be substantially the fault of the applying manufacturer.

(3) The conditions causing the impending violation must jeopardize the solvency of the applying manufacturer if relief is not granted.

(4) The applying manufacturer must demonstrate that no other allowances under this part will be available to avoid the impending violation.

(5) Any relief may not exceed one year beyond the date relief is granted.

(6) The Administrator may impose other conditions on the granting of relief including provisions to recover the lost environmental benefit.

(c) *Extension of deadlines.* Small-volume manufacturers may use the provisions of 40 CFR 1068.241 to ask for an extension of a deadline to meet emission standards. We may require that you use available base engines that have been certified to emission standards for land-based engines until you are able to produce engines certified to the requirements of this part.

29. Section 94.212 is amended by revising paragraph (b)(10) to read as follows:

§ 94.212 Labeling.

(b) *Engine labels.*

(10) The application for which the engine family is certified. (For example: constant-speed auxiliary, variable-speed propulsion engines used with fixed-pitch propellers, recreational, etc.)

30. Section 94.218 is amended by adding a new paragraph (d)(2)(iv) to read as follows:

§ 94.218 Deterioration factor determination.

- (d)
 - (2)
 - (iv) *Assigned deterioration factors.* Small-volume manufacturers may use deterioration factors established by EPA.

Subpart D—[Amended]

31. Section 94.304 is amended by revising paragraph (k) to read as follows:

§ 94.304 Compliance requirements.

(k) The following provisions limit credit exchanges between different types of engines:

(1) Credits generated by Category 1 engine families may be used for compliance by Category 1 or Category 2 engine families. Credits generated from Category 1 engine families for use by Category 2 engine families must be discounted by 25 percent.

(2) Credits generated by Category 2 engine families may be used for compliance only by Category 2 engine families.

(3) Credits may not be exchanged between recreational and commercial engines.

Subpart F—[Amended]

32. Section 94.501 is amended by revising paragraph (a) to read as follows:

§ 94.501 Applicability.

(a) The requirements of this subpart are applicable to manufacturers of engines subject to the provisions of Subpart A of this part, excluding small-volume manufacturers.

33. Section 94.503 is amended by adding a new paragraph (d) to read as follows:

§ 94.503 General requirements.

(d) If you certify an engine family with carryover emission data, as described in § 94.206(c), and these equivalent engine families consistently meet the emission standards with production-line testing over the preceding two-year period, you may ask for a reduced testing rate for further production-line testing for that family. The minimum testing rate is one engine per engine family. If we reduce your testing rate, we may limit our approval to a single model year.

Subpart J—[Amended]

34. Section 94.907 is amended by revising paragraphs (d) and (g) to read as follows:

§ 94.907 Engine dressing exemption.

- (d) New marine engines that meet all the following criteria are exempt under this section:
 - (1) You must produce it by marinizing an engine covered by a valid certificate

of conformity from one of the following programs:

(i) Heavy-duty highway engines (40 CFR part 86).

(ii) Land-based nonroad diesel engines (40 CFR part 89).

(iii) Locomotive engines (40 CFR part 92).

(2) The engine must have the label required under 40 CFR part 86, 89, or 92.

(3) You must not make any changes to the certified engine that could reasonably be expected to increase its emissions. For example, if you make any of the following changes to one of these engines, you do not qualify for the engine dressing exemption:

(i) Changing any fuel system parameters from the certified configuration.

(ii) Replacing an original turbocharger, except that small-volume manufacturers of recreational engines may replace an original turbocharger with one that matches the performance of the original turbocharger.

(iii) Modify or design the marine engine cooling or aftercooling system so that temperatures or heat rejection rates are outside the original engine manufacturer's specified ranges.

(4) You must make sure that fewer than 50 percent of the engine model's total sales, from all companies, are used in marine applications.

* * * * *

(g) If your engines do not meet the criteria listed in paragraphs (d)(2) through (d)(4) of this section, they will be subject to the standards and prohibitions of this part. Marinization without a valid exemption or certificate of conformity would be a violation of § 94.1103(a)(1) and/or the tampering prohibitions of the applicable land-based regulations (40 CFR part 86, 89, or 92).

* * * * *

Subpart K—[Amended]

35. Section 94.1103 is amended by revising paragraph (a)(5) to read as follows:

§ 94.1103 Prohibited acts.

(a) * * *

(5) For a manufacturer of marine vessels to distribute in commerce, sell, offer for sale, or deliver for introduction into commerce a new vessel containing an engine not covered by a certificate of conformity applicable for an engine model year the same as or later than the calendar year in which the manufacture of the new vessel is initiated. (Note: For the purpose of this paragraph (a)(5), the manufacture of a vessel is initiated

when the keel is laid, or the vessel is at a similar stage of construction.) In general, you may use up your normal inventory of engines not certified to new emission standards if they were built before the date of the new standards. However, we consider stockpiling of these engines to be a violation of paragraph (a)(1)(i)(A) of this section.

* * * * *

37. A new subchapter U is added to read as follows:

SUBCHAPTER U—AIR POLLUTION CONTROLS

PART 1048—CONTROL OF EMISSIONS FROM NEW, LARGE NONROAD SPARK-IGNITION ENGINES

Subpart A—Determining How To Follow This Part

Sec.

1048.1 Does this part apply to me?

1048.5 May I exclude any engines from this part's requirements?

1048.10 What main steps must I take to comply with this part?

1048.15 Do any other regulation parts affect me?

1048.20 What requirements from this part apply to my excluded engines?

Subpart B—Emission Standards and Related Requirements

1048.101 What exhaust emission standards must my engines meet?

1048.105 What steps must I take to address evaporative emissions?

1048.110 How must my engines diagnose malfunctions?

1048.115 What other requirements must my engines meet?

1048.120 What warranty requirements apply to me?

1048.125 What maintenance instructions must I give to buyers?

1048.130 What installation instructions must I give to equipment manufacturers?

1048.135 How must I label and identify the engines I produce?

1048.140 How do I certify my engines to more stringent, voluntary standards?

1048.145 What provisions apply only for a limited time?

Subpart C—Certifying Engine Families

1048.201 What are the general requirements for submitting a certification application?

1048.205 How must I prepare my application?

1048.210 May I get preliminary approval before I complete my application?

1048.215 What happens after I complete my application?

1048.220 How do I amend the maintenance instructions in my application?

1048.225 How do I amend my application to include new or modified engines?

1048.230 How do I select engine families?

1048.235 How does testing fit with my application for a certificate of conformity?

1048.240 How do I determine if my engine family complies with emission standards?

1048.245 What records must I keep and make available to EPA?

1048.250 When may EPA deny, revoke, or void my certificate of conformity?

Subpart D—Testing Production-line Engines

1048.301 When must I test my production-line engines?

1048.305 How must I prepare and test my production-line engines?

1048.310 How must I select engines for production-line testing?

1048.315 How do I know when my engine family does not comply?

1048.320 What happens if one of my production-line engines fails to meet emission standards?

1048.325 What happens if an engine family does not comply?

1048.330 May I sell engines from an engine family with a suspended certificate of conformity?

1048.335 How do I ask EPA to reinstate my suspended certificate?

1048.340 When may EPA revoke my certificate under this subpart and how may I sell these engines again?

1048.345 What production-line testing records must I send to EPA?

1048.350 What records must I keep?

Subpart E—Testing In-Use Engines

1048.401 What testing requirements apply to my engines that have gone into service?

1048.405 How does this program work?

1048.410 How must I select, prepare, and test my in-use engines?

1048.415 How can I use in-use emission credits?

1048.420 What happens if my in-use engines do not meet requirements?

1048.425 What in-use testing information must I report to EPA?

1048.430 What records must I keep?

Subpart F—Test Procedures

1048.501 What procedures must I use to test my engines?

1048.505 What steady-state duty cycles apply for laboratory testing?

1048.510 What transient duty cycles apply for laboratory testing?

1048.515 Field-testing procedures.

Subpart G—Compliance Provisions

1048.601 What compliance provisions apply to these engines?

1048.605 What are the provisions for exempting engines from the requirements of this part if they are already certified under the motor-vehicle program?

1048.610 What are the provisions for producing nonroad equipment with engines already certified under the motor-vehicle program?

1048.615 What are the provisions for exempting engines designed for lawn and garden applications?

Subpart H—Definitions and Other Reference Information

- 1048.701 What definitions apply to this part?
- 1048.705 What symbols, acronyms, and abbreviations does this part use?
- 1048.710 What materials does this part reference?
- 1048.715 How should I request EPA to keep my information confidential?
- 1048.720 How do I request a public hearing?

Appendix I to Part 1048—Transient Duty Cycle for Constant-Speed Engines**Appendix II to Part 1048—Transient Duty Cycle for Engines That Are Not Constant-Speed Engines**

Authority: 42 U.S.C. 7401–7671(q).

Subpart A—Determining How to Follow This Part**§ 1048.1 Does this part apply to me?**

(a) This part applies to you if you manufacture or import new, spark-ignition, nonroad engines (defined in § 1048.701) with rated power above 19 kW, unless we exclude them under § 1048.5.

(b) If you manufacture or import engines with rated power at or below 19 kW that would otherwise be covered by 40 CFR part 90, you may choose to meet the requirements of this part instead. In this case, all the provisions of this part apply for those engines.

(c) Note in subpart G of this part that 40 CFR part 1068 applies to everyone, including anyone who manufactures, installs, owns, operates, or rebuilds any of the engines this part covers or equipment containing these engines.

(d) You need not follow this part for engines you produce before the 2004 model year, unless you certify voluntarily. See § 1048.100, § 1048.145, and the definition of model year in § 1048.701 for more information about the timing of new requirements.

(e) See §§ 1048.701 and 1048.705 for definitions and acronyms that apply to this part.

§ 1048.5 May I exclude any engines from this part's requirements?

(a) You may exclude the following nonroad engines:

- (1) Engines used in snowmobiles, all-terrain vehicles, or off-highway motorcycles and regulated in 40 CFR part 1051.
- (2) Propulsion marine engines. See 40 CFR part 91. This part applies with respect to auxiliary marine engines.
- (b) You may exclude engines used in aircraft. See 40 CFR part 87.
- (c) You may exclude stationary engines, except that you must meet the

requirements in § 1048.20. In addition, the prohibitions in 40 CFR 1068.101 restrict the use of stationary engines for non-stationary purposes.

(d) See subpart G of this part and 40 CFR part 1068, subpart C, for exemptions of specific engines.

(e) Send the Designated Officer a written request if you want us to determine whether this part covers or excludes certain engines. Excluding engines from this part's requirements does not affect other requirements that may apply to them.

§ 1048.10 What main steps must I take to comply with this part?

(a) You must have a certificate of conformity from us for each engine family before you do any of the following with a new engine covered by this part: Sell, offer for sale, introduce into commerce, distribute or deliver for introduction into commerce, or import it into the United States. "New" engines may include some already placed in service (see the definition of "new nonroad engine" and "new nonroad equipment" in § 1048.701). You must get a new certificate of conformity for each new model year.

(b) To get a certificate of conformity and comply with its terms, you must do five things:

- (1) Meet the emission standards and other requirements in subpart B of this part.
- (2) Apply for certification (see subpart C of this part).
- (3) Do routine emission testing on production engines (see subpart D of this part).
- (4) Do emission testing on in-use engines, as we direct (see subpart E of this part).
- (5) Follow our instructions throughout this part.

(c) Subpart F of this part and 40 CFR part 1065 describe the procedures you must follow to test your engines.

(d) Subpart G of this part and 40 CFR part 1068 describe requirements and prohibitions that apply to engine manufacturers, equipment manufacturers, owners, operators, rebuilders, and all others.

§ 1048.15 Do any other regulation parts affect me?

(a) Part 1065 of this chapter describes procedures and equipment specifications for testing engines. Subpart F of this part describes how to apply the provisions of part 1065 of this chapter to show you meet the emission standards in this part.

(b) Part 1068 of this chapter describes general provisions, including these seven areas:

(1) Prohibited acts and penalties for engine manufacturers, equipment manufacturers, and others.

(2) Rebuilding and other aftermarket changes.

(3) Exemptions for certain engines.

(4) Importing engines.

(5) Selective enforcement audits of your production.

(6) Defect reporting and recall.

(7) Procedures for public hearings.

(c) Other parts of this chapter affect you if referenced in this part.

§ 1048.20 What requirements from this part apply to my excluded engines?

(a) Manufacturers of stationary engines that would otherwise need to meet the requirements of this part must add a permanent label or tag identifying each engine. This applies equally to importers. To meet labeling requirements, you must do the following things:

(1) Attach the label or tag in one piece so no one can remove it without destroying or defacing it.

(2) Make sure it is durable and readable for the engine's entire life.

(3) Secure it to a part of the engine needed for normal operation and not normally requiring replacement.

(4) Write it in block letters in English.

(5) Instruct equipment manufacturers that they must place a duplicate label as described in § 1068.105 of this chapter if they obscure the engine's label.

(b) Engine labels or tags required under this section must have the following information:

(1) Include the heading "Emission Control Information."

(2) Include your full corporate name and trademark.

(3) State the engine displacement (in liters) and rated power.

(4) State: "THIS ENGINE IS EXCLUDED FROM THE REQUIREMENTS OF 40 CFR PART 1048 AS A "STATIONARY ENGINE." INSTALLING OR USING THIS ENGINE IN ANY OTHER APPLICATION MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY."

Subpart B—Emission Standards and Related Requirements**§ 1048.101 What exhaust emission standards must my engines meet?**

(a) The exhaust emission standards in Table 1 of § 1048.101 apply for steady-state measurement of emissions with the duty-cycle test procedures in subpart F of this part:

TABLE 1 OF § 1048.101.—STEADY-STATE DUTY-CYCLE EMISSION STANDARDS (g/kW-hr)

Model year	Emission standards		Alternate emission standards	
	HC+NO _x	CO	HC+NO _x	CO
2004–2006	4.0	50.0	.....	.....
2007 and later	3.4	3.4	1.3	27.0

(b) The exhaust emission standards in Table 2 of § 1048.101 apply for transient measurement of emissions with the duty-cycle test procedures in subpart F of this part:

TABLE 2 OF § 1048.101.—TRANSIENT DUTY-CYCLE EMISSION STANDARDS (g/kW-hr)

Model year	Emission standards		Alternate emission standards	
	HC+NO _x	CO	HC+NO _x	CO
2007 and later	3.4	3.4	1.3	27.0

(c) The exhaust emission standards in Table 3 of § 1048.101 apply for emission measurements with the field-test procedures in subpart F of this part:

TABLE 3 OF § 1048.101.—FIELD-TESTING EMISSION STANDARDS (g/kW-hr)

Model year	Emission standards		Alternate emission standards	
	HC+NO _x	CO	HC+NO _x	CO
2007 and later	4.7	5.0	1.8	41.0

(d) You may choose to meet the alternate emission standards instead of the regular emission standards, as described in paragraphs (a) through (c) of this section.

(e) The standards apply for the model years listed in the tables in this section. You may choose to certify earlier model years.

(f) Apply the exhaust emission standards in this section for engines using all fuels. You must meet the numerical emission standards for hydrocarbons in this section based on the following types of hydrocarbon emissions for engines powered by the following fuels:

(1) Gasoline- and LPG-fueled engines: THC emissions.

(2) Natural gas-fueled engines: NMHC emissions (for testing to show that these engines meet the emission standards in paragraph (c) of this section, disregard hydrocarbon emissions).

(3) Alcohol-fueled engines: THCE emissions.

(g) Certain engines with total displacement at or below 1000 cc may comply with the requirements of 40 CFR part 90 instead of complying with the emission standards in this section, as described in § 1048.615.

(h) You must show in your certification application that your engines meet the exhaust emission

standards in paragraphs (a) through (c) of this section over their full useful life. The minimum useful life is 5,000 hours of operation or seven years, whichever comes first. Specify a longer useful life under either of two conditions:

(1) If you design, advertise, or market your engine to operate longer than the minimum useful life (your recommended time until rebuild may indicate a longer design life).

(2) If your basic mechanical warranty is longer than the minimum useful life.

(i) Refer to § 1048.240 to apply deterioration factors.

(j) Apply this subpart to all testing, including production-line and in-use testing, as described in subparts D and E of this part.

§ 1048.105 What steps must I take to address evaporative emissions?

(a) Starting in the 2007 model year, if you produce an engine that runs on a volatile liquid fuel (such as gasoline), you must take the following steps to address evaporative emissions:

(1) Specify and incorporate design features to avoid venting fuel vapors directly to the atmosphere. Evaporative hydrocarbon emissions must be less than 0.2 grams per gallon of fuel tank capacity during a nine-hour period of gradually increasing ambient temperatures from 22 to 36° C with fuel meeting the specifications in 40 CFR

1065.210, when measured from an engine with a complete fuel system using the equipment and procedures specified in 40 CFR 86.107–96 and 86.133–96. You may rely on any of the following designs instead of doing emission tests to show that you meet this requirement:

(i) Use a tethered or self-closing gas cap on a fuel tank that stays sealed up to a positive pressure of 24.5 kPa (3.5 psi) or a vacuum pressure of 10.5 kPa (1.5 psi).

(ii) Use a tethered or self-closing gas cap on a fuel tank that stays sealed up to a positive or vacuum pressure of 7 kPa (1 psi). Use an inflatable, nonpermeable bag that occupies the vapor space inside the fuel tank, exchanging air with the ambient as needed to prevent pressure buildup in the tank. The volume of the inflatable bag must be at least 30 percent of the total tank volume.

(iii) Use a tethered or self-closing gas cap on a fuel tank that stays sealed except for venting to a charcoal canister. The engine must be designed to draw hydrocarbons from the canister into the engine's combustion chamber as needed to prevent evaporative emissions during normal operation.

(iv) Use a tethered or self-closing gas cap on a collapsible bladder tank. A collapsible bladder tank is one that

changes in volume as needed to accommodate the changing amount of liquid fuel, thus eliminating the vapor space.

(2) For nonmetallic fuel lines, specify and use products that meet the Category 1 specifications in SAE J2260 "Nonmetallic Fuel System Tubing with One or More Layers," November 1996 (incorporated by reference in § 1048.710).

(3) Liquid fuel in the fuel tank may not reach boiling during continuous engine operation in the final installation at an ambient temperature of 30° C. Gasoline with a volatility of 9 RVP begins to boil at about 53° C. You may satisfy this requirement by specifying and incorporating design features to prevent fuel boiling under all normal operation.

(b) If other companies install your engines in their equipment, give them any appropriate instructions, as described in § 1048.130.

§ 1048.110 How must my engines diagnose malfunctions?

(a) *Equip your engines with a diagnostic system.* Starting in the 2007 model year, make sure your system will detect significant malfunctions in its emission-control system using one of the following protocols:

(1) If your emission-control strategy depends on maintaining air-fuel ratios at stoichiometry, an acceptable diagnostic design would identify malfunction whenever the air-fuel ratio does not cross stoichiometry for one minute. You may use other diagnostic strategies if we approve them in advance.

(2) If the protocol described in paragraph (a)(1) of this section does not apply to your engine, you must use an alternative approach that we approve in advance.

(b) *Use a malfunction-indicator light (MIL).* Make sure the MIL is readily visible to the operator; it may be any color except red. When the MIL goes on, it must display "Check Engine," "Service Engine Soon," or a similar message that we approve. You may use sound in addition to the light signal. The MIL must go on under each of these circumstances:

(1) When a malfunction occurs, as described in paragraph (a) of this section.

(2) When the diagnostic system cannot send signals to meet the requirement of paragraph (b)(1) of this section.

(3) When the engine's ignition is in the "key-on" position before starting or cranking. The MIL should go out after

engine starting if the system detects no malfunction.

(c) *Control when the MIL can go out.* If the MIL goes on to show a malfunction, it must remain on during all later engine operation until servicing corrects the malfunction. If the engine is not serviced, but the malfunction does not recur for three consecutive engine starts during which the malfunctioning system is evaluated and found to be working properly, the MIL may stay off during later engine operation.

(d) *Store trouble codes in computer memory.* Record and store in computer memory any diagnostic trouble codes showing a malfunction that should illuminate the MIL. The stored codes must identify the malfunctioning system or component as uniquely as possible. Make these codes available through the data link connector as described in paragraph (g) of this section. You may store codes for conditions that do not turn on the MIL. The system must store a separate code to show when the diagnostic system is disabled (from malfunction or tampering).

(e) *Make data, access codes, and devices accessible.* Make all required data accessible to us without any access codes or devices that only you can supply. Ensure that anyone servicing your engine can read and understand the diagnostic trouble codes stored in the onboard computer with generic tools and information.

(f) *Consider exceptions for certain conditions.* Your diagnostic systems may disregard trouble codes for the first three minutes after engine starting. You may ask us to approve diagnostic-system designs that disregard trouble codes under other conditions that would produce an unreliable reading, damage systems or components, or cause other safety risks. This might include operation at altitudes over 8,000 feet.

(g) *Follow standard references for formats, codes, and connections.* Follow conventions defined in the following documents (incorporated by reference in § 1048.710), or ask us to approve using updated versions of these documents:

(1) ISO 9141-2 February 1994, Road vehicles—Diagnostic systems Part 2.

(2) ISO 14230-4 June 2000, Road vehicles—Diagnostic systems—KWP 2000 requirements for emission-related systems.

§ 1048.115 What other requirements must my engines meet?

Your engines must meet the following requirements:

(a) *Closed crankcase.* Design and produce your engines so they release no

crankcase emissions into the atmosphere.

(b) *Torque broadcasting.* Electronically controlled engines must broadcast their speed and output shaft torque (in newton-meters) on their controller area networks. Engines may alternatively broadcast a surrogate value for torque that can be read with a remote device. This information is necessary for testing engines in the field (see § 1065.515 of this chapter). This requirement applies beginning in the 2007 model year.

(c) *EPA access to broadcast information.* If we request it, you must provide us any hardware or tools we would need to readily read, interpret, and record all information broadcast by an engine's on-board computers and electronic control modules. If you broadcast a surrogate parameter for torque values, you must provide us what we need to convert these into torque units. We will not ask for hardware or tools if they are readily available commercially.

(d) *Emission sampling capability.* Produce all your engines to allow sampling of exhaust emissions in the field. This sampling requires either exhaust ports downstream of any aftertreatment devices or the ability to extend the exhaust pipe by 20 cm. This is necessary to minimize any diluting effect from ambient air at the end of the exhaust pipe.

(e) *Adjustable parameters.* If your engines have adjustable parameters, make sure they meet all the requirements of this part for any adjustment in the physically available range.

(1) We do not consider an operating parameter adjustable if you permanently seal it or if ordinary tools cannot readily access it.

(2) We may require that you set adjustable parameters to any specification within the adjustable range during certification testing, production-line testing, selective enforcement auditing, or any required in-use testing.

(f) *Prohibited controls.* You may not design engines with an emission-control system that emits any noxious or toxic substance that the engine would not emit during operation in the absence of such a system, except as specifically permitted by regulation.

(g) *Defeat devices.* You may not equip your engines with a defeat device. A defeat device is an auxiliary emission-control device or other control feature that reduces the effectiveness of emission controls under conditions you may reasonably expect the engine to encounter during normal operation and use. This does not apply to auxiliary

emission-control devices you identify in your certification application if any of the following is true:

(1) The conditions of concern were substantially included in your prescribed duty cycles.

(2) You show your design is necessary to prevent catastrophic engine (or equipment) damage or accidents.

(3) The reduced effectiveness applies only to starting the engine.

§ 1048.120 What warranty requirements apply to me?

(a) You must warrant to the ultimate buyer that the new engine meets two conditions:

(1) You have designed, built, and equipped it to meet the requirements of this part.

(2) It is free from defects in materials and workmanship that may keep it from meeting these requirements.

(b) Your emission-related warranty must be valid for at least 50 percent of the engine's useful life in hours of operation or at least three years, whichever comes first. In the case of a high-cost warranted part, the warranty must be valid for at least 70 percent of the engine's useful life in hours of operation or at least five years, whichever comes first. You may offer a warranty more generous than we require. This warranty may not be shorter than any published or negotiated warranty you offer for the engine or any of its components. If an engine has no tamper-proof hour meter, we base the warranty periods in this paragraph only on the engine's age (in years).

(c) The emission-related warranty must cover components whose failure would increase an engine's emissions, including electronic controls, fuel injection (for liquid or gaseous fuels), exhaust-gas recirculation, aftertreatment, or any other system you develop to control emissions. In general, we consider replacing or repairing other components to be the owner's responsibility.

(d) You may exclude from your warranty a component named in paragraph (c) of this section, if it meets both of the following conditions:

(1) It was in general use on similar engines before January 1, 2000.

(2) Its failure would clearly degrade the engine's performance enough that the operator would need to repair or replace it.

(e) You may limit your emission-related warranty's validity to properly maintained engines, as described in § 1068.115 of this chapter.

(f) If you make an aftermarket part, you may—but do not have to—certify that using the part will still allow

engines to meet emission standards, as described in § 85.2114 of this chapter.

§ 1048.125 What maintenance instructions must I give to buyers?

Give the ultimate buyer of each new engine written instructions for properly maintaining and using the engine, including the emission-control system. The maintenance instructions also apply to service accumulation on your test engines, as described in 40 CFR part 1065, subpart E.

(a) *Critical emission-related maintenance.* You may schedule critical maintenance on particular devices if you meet the following conditions:

(1) You may ask us to approve maintenance on air-injection, fuel-system, or ignition components, aftertreatment devices, exhaust gas recirculation systems, crankcase ventilation valves, or oxygen sensors only if it meets two criteria:

(i) Operators are reasonably likely to do the maintenance you call for.

(ii) Engines need the maintenance to meet emission standards.

(2) We will accept scheduled maintenance as reasonably likely to occur in use if you satisfy any of four conditions:

(i) You present data showing that, if a lack of maintenance increases emissions, it also unacceptably degrades the engine's performance.

(ii) You present survey data showing that 80 percent of engines in the field get the maintenance you specify at the recommended intervals.

(iii) You provide the maintenance free of charge and clearly say so in maintenance instructions for the customer.

(iv) You otherwise show us that the maintenance is reasonably likely to be done at the recommended intervals.

(b) *Minimum maintenance intervals.* You may not schedule emission-related maintenance within the minimum useful life period for aftertreatment devices, fuel injectors, sensors, electronic control units, and turbochargers.

(c) *Noncritical emission-related maintenance.* For engine parts not listed in paragraph (a) or (b) of this section, you may recommend any additional amount of inspection or maintenance. But you must state clearly that these steps are not necessary to keep the emission-related warranty valid. Also, do not take these inspection or maintenance steps during service accumulation on your test engines.

(d) *Source of parts and repairs.* Print clearly on the first page of your written maintenance instructions that any repair shop or person may maintain, replace,

or repair emission-control devices and systems. Make sure your instructions require no component or service identified by brand, trade, or corporate name. Also, do not directly or indirectly distinguish between service by companies with which you have a commercial relationship and service by independent repair shops or the owner. You may disregard the requirements in this paragraph (d) if you do one of two things:

(1) Provide a component or service without charge under the purchase agreement.

(2) Get us to waive this prohibition in the public's interest by convincing us the engine will work properly only with the identified component or service.

§ 1048.130 What installation instructions must I give to equipment manufacturers?

(a) If you sell an engine for someone else to install in a piece of nonroad equipment, give the buyer of the engine written instructions for installing it consistent with the requirements of this part. Make sure these instructions have the following information:

(1) Include the heading: "Emission-related installation instructions."

(2) State: "Failing to follow these instructions when installing a certified engine in a piece of nonroad equipment violates federal law (40 CFR 1068.105(b)), subject to fines or other penalties as described in the Clean Air Act."

(3) Describe any other instructions needed to install an exhaust aftertreatment device consistent with your application for certification.

(4) Describe the steps needed to control evaporative emissions, as described in § 1048.105.

(5) Describe any necessary steps for installing the diagnostic system described in § 1048.110.

(6) Describe any limits on the range of applications needed to ensure that the engine operates consistently with your application for certification. For example, if your engines are certified only for constant-speed operation, tell equipment manufacturers not to install the engines in variable-speed applications. Also, if you need to avoid sustained high-load operation to meet the field-testing emission standards we specify in § 1048.101(c), describe how the equipment manufacturer must properly size the engines for a given application.

(7) Describe any other instructions to make sure the installed engine will operate according to design specifications in your application for certification.

(8) State: "If you obscure the engine's emission label, you must place a duplicate label on your equipment, as described in 40 CFR 1068.105."

(b) You do not need installation instructions for engines you install in your own equipment.

§ 1048.135 How must I label and identify the engines I produce?

(a) Assign each production engine a unique identification number and permanently and legibly affix or engrave it on the engine.

(b) At the time of manufacture, add a permanent label identifying each engine. To meet labeling requirements, do four things:

(1) Attach the label in one piece so it is not removable without being destroyed or defaced.

(2) Design and produce it to be durable and readable for the engine's entire life.

(3) Secure it to a part of the engine needed for normal operation and not normally requiring replacement.

(4) Write it in block letters in English.

(c) On your engine label, do 13 things:

(1) Include the heading "EMISSION CONTROL INFORMATION."

(2) Include your full corporate name and trademark.

(3) State: "THIS ENGINE IS CERTIFIED TO OPERATE ON [specify operating fuel or fuels]."

(4) Identify the emission-control system; your identifiers must use names and abbreviations consistent with SAE J1930, which we incorporate by reference (see § 1048.710).

(5) List all requirements for fuel and lubricants.

(6) State the date of manufacture [DAY (optional), MONTH, and YEAR]; if you stamp this information on the engine and print it in the owner's manual, you may omit it from the label.

(7) State: "THIS ENGINE MEETS U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS FOR [MODEL YEAR] LARGE NONROAD SI ENGINES."

(8) Include EPA's standardized designation for the engine family.

(9) State the engine's displacement (in liters) and rated power.

(10) State the engine's useful life (see § 1048.101(h)).

(11) List specifications and adjustments for engine tuneups; show the proper position for the transmission during tuneup and state which accessories should be operating.

(12) Describe other information on proper maintenance and use.

(13) Identify the emission standards to which you have certified the engine.

(d) Some of your engines may need more information on the label.

(1) If you have an engine family that has been certified only for constant-speed engines, add to the engine label "CONSTANT-SPEED ONLY."

(2) If you certify an engine to the voluntary standards in § 1048.140, add to the engine label "BLUE SKY SERIES."

(3) If you produce an engine we exempt from the requirements of this part, see 40 CFR part 1068, subparts C and D, for more label information.

(e) Some engines may not have enough space for a label with all the required information. In this case, you may omit the information required in paragraphs (c)(3), (c)(4), (c)(5), and (c)(12) of this section if you print it in the owner's manual instead.

(f) If you are unable to meet these labeling requirements, you may ask us to modify them consistent with the intent of this section.

(g) If you obscure the engine label while installing the engine in the vehicle, you must place a duplicate label on the vehicle. If someone else installs the engine in a vehicle, give them duplicate labels if they ask for them (see 40 CFR 1068.105).

§ 1048.140 How do I certify my engines to more stringent, voluntary standards?

This section defines voluntary standards that allow you to produce engines with a recognized level of superior emission control. We refer to these as "Blue Sky Series" engines. If you certify engines under this section, they must meet one of the following standards:

(a) For the 2003 model year, an engine family may qualify for designation as "Blue Sky Series" by meeting all the requirements in this part that apply to 2004 model year engines. This includes all testing and reporting requirements.

(b) For the 2003 through 2006 model years, an engine family may qualify for designation as "Blue Sky Series" by meeting all the requirements in this part that apply to 2007 model year engines. This includes all testing and reporting requirements.

(c) Any engine family may qualify for designation as "Blue Sky Series" by meeting all the requirements in this part, while certifying to the following voluntary emission standards:

(1) 1.3 g/kW-hr HC+NO_x and 3.4 g/kW-hr CO using steady-state and transient test procedures, as described in subpart F of this part.

(2) 1.8 g/kW-hr HC+NO_x and 4.7 g/kW-hr CO using field-testing procedures, as described in subpart F of this part.

§ 1048.145 What provisions apply only for a limited time?

The provisions in this section apply instead of other provisions in this part. This section describes when these interim provisions expire.

(a) *Family banking.* You may certify an engine family to comply with all the 2007 model year requirements before 2007. For each year of early compliance for an engine family, you may delay certification by one year for a different engine family with smaller projected power-weighted nationwide sales. For example, if you sell 1,000 engines with an average power rating of 50 kW certified a year early, you may delay certification for another engine family with an average power rating of 100 kW of up to 500 engines. You must notify us as soon as you are aware of such a discrepancy between projected and actual sales.

(b) *Hydrocarbon standards.* For 2004 through 2006 model years, manufacturers may use nonmethane hydrocarbon measurements to demonstrate compliance with applicable emission standards.

(c) *Transient emission testing.* Engines rated over 560 kW are exempt from the transient emission standards in § 1048.101(b).

(d) *In-use emission credits with steady-state testing.* You may generate credits for the in-use averaging program described in § 1048.415 using steady-state test procedures for 2004 through 2006 model years.

(e) *Optional early field testing.* For 2004 through 2006 model years, manufacturers may optionally use the field-testing procedures in subpart F of this part for any in-use testing required under subpart E of this part. In this case, the same emission standards apply to both steady-state testing and field testing.

(f) *Small-volume provisions.* Special provisions apply to you if you manufacture fewer than 300 engines per year that are subject to the standards of this part.

(1) For 2004 through 2006 model year engines, the lawn and garden exemption described in § 1048.615 applies to your engines with total displacement up to 2500 cc with rated power at or below 30 kW. To qualify for this exemption, you must meet a CO emission standard of 130 g/kW-hr using the procedures specified in 40 CFR part 90.

(2) For 2007 through 2009 model year engines, you may optionally comply with the emission standards and other requirements that would otherwise apply starting in 2004.

(3) If you qualify for the hardship provisions in § 1068.241 of this chapter,

we may approve extensions of up to three years total.

Subpart C—Certifying Engine Families

§ 1048.201 What are the general requirements for submitting a certification application?

(a) Send us an application for a certificate of conformity for each engine family. Each application is valid for only one model year.

(b) The application must not include false or incomplete statements or information (see § 1048.250). We may choose to ask you to send us less information than we specify in this subpart, but this would not change your recordkeeping requirements.

(c) Use good engineering judgment for all decisions related to your application (see § 1068.5 of this chapter).

(d) An authorized representative of your company must approve and sign the application.

§ 1048.205 How must I prepare my application?

In your application, you must do all the following things:

(a) Describe the engine family's specifications and other basic parameters of the engine's design. List the types of fuel you intend to use to certify the engine family (for example, gasoline, liquefied petroleum gas, methanol, or natural gas).

(b) Explain how the emission-control system operates. Describe in detail all the system's components, auxiliary emission-control devices, and all fuel-system components you will install on any production or test engine. Explain why any auxiliary emission-control devices are not defeat devices (see § 1048.115(g)). Do not include detailed calibrations for components unless we ask for them.

(c) Explain how the engine diagnostic system works, describing especially the engine conditions (with the corresponding diagnostic trouble codes) that cause the malfunction-indicator light to go on. Propose what you consider to be extreme conditions under which the diagnostic system should disregard trouble codes, as described in § 1048.110.

(d) Describe the engines you selected for testing and the reasons for selecting them.

(e) Describe any special or alternate test procedures you used (see § 1048.501).

(f) Identify the duty cycle and the number of engine operating hours used to stabilize emission levels. Describe any scheduled maintenance you did.

(g) List the specifications of the test fuel to show that it falls within the

required ranges we specify in 40 CFR part 1065, subpart C.

(h) Identify the engine family's useful life.

(i) Propose maintenance and use instructions for the ultimate buyer of each new engine (see § 1048.125).

(j) Propose emission-related installation instructions if you sell engines for someone else to install in a piece of nonroad equipment (see § 1048.130).

(k) Identify each high-cost warranted part and show us how you calculated its replacement cost, including the estimated retail cost of the part, labor rates, and labor hours to diagnose and replace defective parts.

(l) Propose an emission-control label.

(m) Present emission data for HC, NO_x, and CO on a test engine to show your engines meet the duty-cycle emission standards we specify in § 1048.101(a) and (b). Show these figures before and after applying deterioration factors for each engine. Include test data for each type of fuel on which you intend for engines in the engine family to operate (for example, gasoline, liquefied petroleum gas, methanol, or natural gas).

(n) Report all test results, including those from invalid tests or from any nonstandard tests (such as measurements based on exhaust concentrations in parts per million).

(o) Identify the engine family's deterioration factors and describe how you developed them. Present any emission test data you used for this.

(p) Describe all adjustable operating parameters (see § 1048.115(d)), including the following:

(1) The nominal or recommended setting and the associated production tolerances.

(2) The intended physically adjustable range.

(3) The limits or stops used to establish adjustable ranges.

(4) Production tolerances of the limits or stops used to establish each physically adjustable range.

(5) Information showing that someone cannot readily modify the engines to operate outside the physically adjustable range.

(q) Describe everything we need to read and interpret all the information broadcast by an engine's onboard computers and electronic control modules and state that you will give us any hardware or tools we would need to do this. You may reference any appropriate publicly released standards that define conventions for these messages and parameters. Format your information consistent with publicly released standards.

(r) If your engine family includes a volatile liquid fuel, propose a set of design parameters and instructions for installing the engine to minimize evaporative emissions (see § 1048.115(g)).

(s) State whether your engine will operate in variable-speed applications, constant-speed applications, or both. If your certification covers only constant-speed applications, describe how you will prevent use of these engines in variable-speed applications.

(t) State that all the engines in the engine family comply with the field-testing emission standards we specify in § 1048.101(c) for all normal operation and use (see § 1048.515). Describe in detail any testing, engineering analysis, or other information on which you base this statement.

(u) State that you operated your test engines according to the specified procedures and test parameters using the fuels described in the application to show you meet the requirements of this part.

(v) State unconditionally that all the engines in the engine family comply with the requirements of this part, other referenced parts, and the Clean Air Act (42 U.S.C. 7401 et seq.).

(w) Include estimates of engine production.

(x) Add other information to help us evaluate your application if we ask for it.

§ 1048.210 May I get preliminary approval before I complete my application?

If you send us information before you finish the application, we will review it and make any appropriate determinations listed in § 1048.215(b) within 90 days of your request. If we need to ask you for further information, we will extend the 90-day period by the number of days we wait for your response.

§ 1048.215 What happens after I complete my application?

(a) If any of the information in your application changes after you submit it, amend it as described in § 1048.225.

(b) We may decide that we cannot approve your application unless you revise it.

(1) If you inappropriately use the provisions of § 1048.230(c) or (d) to define a broader or narrower engine family, we will require you to redefine your engine family.

(2) If we determine your selected useful life for the engine family is too short, we will require you to lengthen it (see § 1048.101(h)).

(3) If we determine your deterioration factors are not appropriate, we will

require you to revise them (see § 1048.240(c)).

(4) If your diagnostic system is inadequate for detecting significant malfunctions in emission-control systems, we will require you to make the system more effective (see § 1048.110(b)).

(5) If your diagnostic system inappropriately disregards trouble codes under certain conditions, we will require you to change the system to operate under broader conditions (see § 1048.110(g)).

(6) If your proposed label is inconsistent with § 1048.135, we will require you to change it (and tell you how, if possible).

(7) If you require or recommend maintenance and use instructions inconsistent with § 1048.125, we will require you to change them.

(8) If we find any other problem with your application, we will tell you how to correct it.

(c) If we determine your application is complete and shows you meet all the requirements, we will issue a certificate of conformity for your engine family for that model year. If we deny the application, we will explain why in writing. You may then ask us to hold a hearing to reconsider our decision (see § 1048.720).

§ 1048.220 How do I amend the maintenance instructions in my application?

Send the Designated Officer a request to amend your application for certification for an engine family if you want to change the maintenance instructions in a way that could affect emissions. In your request, describe the proposed changes to the maintenance instructions. Unless we disapprove it, you may distribute the new maintenance instructions to your customers 30 days after we receive your request. We may also approve a shorter time or waive this requirement.

§ 1048.225 How do I amend my application to include new or modified engines?

(a) You must amend your application for certification before you take either of the following actions:

(1) Add an engine to a certificate of conformity.

(2) Make a design change for a certified engine family that may affect emissions or an emission-related part over the engine's lifetime.

(b) Send the Designated Officer a request to amend the application for certification for an engine family. In your request, do all of the following:

(1) Describe the engine model or configuration you are adding or changing.

(2) Include engineering evaluations or reasons why the original test engine is or is not still appropriate.

(3) If the original test engine for the engine family is not appropriate to show compliance for the new or modified engine, include new test data showing that the new or modified engine meets the requirements of this part.

(c) You may start producing the new or modified engine anytime after you send us your request.

(d) You must give us test data within 30 days if we ask for more testing, or stop producing the engine if you cannot do this.

(e) If we determine that the certificate of conformity would not cover your new or modified engine, we will send you a written explanation of our decision. In this case, you may no longer produce these engines, though you may ask for a hearing for us to reconsider our decision (see § 1048.720).

§ 1048.230 How do I select engine families?

(a) Divide your product line into families of engines that you expect to have similar emission characteristics. Your engine family is limited to a single model year.

(b) Group engines in the same engine family if they are identical in all of the following aspects:

(1) The combustion cycle.

(2) The cooling system (water-cooled vs. air-cooled).

(3) The number and arrangement of cylinders.

(4) The number, location, volume, and composition of catalytic converters.

(5) Method of air aspiration.

(6) Bore and stroke.

(7) Configuration of the combustion chamber.

(8) Location of intake and exhaust valves or ports.

(c) In some cases you may subdivide a group of engines that is identical under paragraph (b) of this section into different engine families. To do so, you must show you expect emission characteristics to be different during the useful life or that any of the following engine characteristics are different:

(1) Method of actuating intake and exhaust timing (poppet valve, reed valve, rotary valve, etc.).

(2) Sizes of intake and exhaust valves or ports.

(3) Type of fuel.

(4) Configuration of the fuel system.

(5) Exhaust system.

(d) If your engines are not identical with respect to the things listed in paragraph (b) of this section, but you show that their emission characteristics during the useful life will be similar, we

may approve grouping them in the same engine family.

(e) If you cannot define engine families by the method in this section, we will define them based on features related to emission characteristics.

§ 1048.235 How does testing fit with my application for a certificate of conformity?

This section describes how to test engines in your effort to apply for a certificate of conformity.

(a) Test your engines using the procedures and equipment specified in subpart F of this part.

(b) Select from each engine family a test engine for each fuel type with a configuration you believe is most likely to exceed the emission standards. Using good engineering judgment, consider the emission levels of all exhaust constituents over the full useful life of the engine when operated in a piece of equipment.

(c) You may submit emission data for equivalent engine families from previous years instead of doing new tests, but only if the data shows that the test engine would meet all the requirements for the latest engine models. We may require you to do new emission testing if we believe the latest engine models could be substantially different from the previously tested engine.

(d) We may choose to measure emissions from any of your test engines.

(1) If we do this, you must provide the test engine at the location we select. We may decide to do the testing at your plant or any other facility. If we choose to do the testing at your plant, you must schedule it as soon as possible and make available the instruments and equipment we need.

(2) If we measure emissions on one of your test engines, the results of that testing become the official data for the engine. Unless we later invalidate this data, we may decide not to consider your data in determining if your engine family meets the emission standards.

(3) Before we test one of your engines, we may set its adjustable parameters to any point within the physically adjustable ranges (see § 1048.115(d)).

(4) Calibrate the test engine within the production tolerances shown on the engine label for anything we do not consider an adjustable parameter (see § 1048.205(m)).

§ 1048.240 How do I determine if my engine family complies with emission standards?

(a) Your engine family complies with the numerical emission standards in § 1048.101 if all emission-data engines representing that family have test results

showing emission levels at or below the standards in § 1048.101(a) through (c).

(b) Your engine family does not comply if any emission-data engine representing that family has test results showing emission levels above the standards from § 1048.101(a) through (c) for any pollutant.

(c) To compare emission levels from the test engine with the emission standards, apply deterioration factors to the measured emission levels. The deterioration factor is a number that shows the relationship between exhaust emissions at the end of useful life and at the low-hour test point. Specify the deterioration factors based on emission measurements, using three decimal places. Deterioration factors must be consistent with emission increases observed from in-use testing with similar engines (see subpart E of this part). Small-volume manufacturers may use assigned deterioration factors established by EPA. Apply the deterioration factors as follows:

(1) For engines that use aftertreatment technology, such as catalytic converters, the deterioration factor is the ratio of exhaust emissions at the end of useful life to exhaust emissions at the low-hour test point. Adjust the official emission results for each tested engine at the selected test point by multiplying the measured emissions by the deterioration factor. If the factor is less than one, use one.

(2) For engines that do not use aftertreatment technology, the deterioration factor is the difference between exhaust emissions at the end of useful life and exhaust emissions at the low-hour test point. Adjust the official emission results for each tested engine at the selected test point by adding the factor to the measured emissions. If the factor is less than zero, use zero.

(d) After adjusting the emission levels for deterioration, round them to the same number of decimal places as the standard. Compare the rounded emission levels to the emission standard for each test engine.

§ 1048.245 What records must I keep and make available to EPA?

(a) Organize and maintain the following records to keep them readily available; we may review these records at any time:

(1) A copy of all applications and any summary information you sent us.

(2) Any of the information we specify in § 1048.205 that you did not include in your application.

(3) A detailed history of each emission-data engine. In each history, describe all of the following:

(i) The test engine's construction, including its origin and buildup, steps you took to ensure that it represents production engines, any components you built specially for it, and all emission-related components.

(ii) How you accumulated engine operating hours, including the dates and the number of hours accumulated.

(iii) All maintenance (including modifications, parts changes, and other service) and the dates and reasons for the maintenance.

(iv) All your emission tests, including documentation on routine and standard tests, as specified in part 1065 of this chapter, and the date and purpose of each test.

(v) All tests to diagnose engine or emission-control performance, giving the date and time of each and the reasons for the test.

(vi) Any other significant events.
(b) Keep data from routine emission tests (such as test cell temperatures and relative humidity readings) for one year after we issue the associated certificate of conformity. Keep all other information specified in paragraph (a) of this section for eight years after we issue your certificate.

(c) Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them.

(d) Send us copies of any engine maintenance instructions or explanations if we ask for them.

§ 1048.250 When may EPA deny, revoke, or void my certificate of conformity?

(a) We may deny your application for certification if your emission-data engines fail to comply with emission standards or other requirements. Our decision may be based on any information available to us. If we deny your application, we will explain why in writing.

(b) In addition, we may deny your application or revoke your certificate if you do any of the following:

(1) Refuse to comply with any testing or reporting requirements.

(2) Submit false or incomplete information (paragraph (d) of this section applies if this is fraudulent).

(3) Render inaccurate any test data.

(4) Deny us from completing authorized activities despite our presenting a warrant or court order (see § 1068.20 of this chapter).

(5) Produce engines for importation into the United States at a location where local law prohibits us from carrying out authorized activities.

(c) We may void your certificate if you do not keep the records we require or do not give us information when we ask for it.

(d) We may void your certificate if we find that you committed fraud to get it. This means intentionally submitting false or incomplete information.

(e) If we deny your application or revoke or void your certificate, you may ask for a hearing (see § 1048.720). Any such hearing will be limited to substantial and factual issues.

Subpart D—Testing Production-line Engines

§ 1048.301 When must I test my production-line engines?

(a) If you produce engines that are subject the requirements of this part, you must test them as described in this subpart.

(b) We may suspend or revoke your certificate of conformity for certain engine families if your production-line engines do not meet emission standards or you do not fulfill your obligations under this subpart (see §§ 1048.325 and 1048.340).

(c) The requirements of this part do not affect our ability to do selective enforcement audits, as described in part 1068 of this chapter.

(d) You may ask to use an alternate program for testing production-line engines. In your request, you must show us that the alternate program gives equal assurance that your production-line engines meet the requirements of this part. If we approve your alternate program, we may waive some or all of this part's requirements.

(e) If you certify an engine family with carryover emission data, as described in § 1048.235(c), and these equivalent engine families consistently meet the emission standards with production-line testing over the preceding two-year period, you may ask for a reduced testing rate for further production-line testing for that family. The minimum testing rate is one engine per engine family. If we reduce your testing rate, we may limit our approval to a single model year.

(f) We may ask you to make a reasonable number of production-line engines available for a reasonable time so we can test or inspect them for compliance with the requirements of this part.

§ 1048.305 How must I prepare and test my production-line engines?

(a) *Test procedures.* Test your production-line engines using either the steady-state or transient testing procedures in subpart F of this part to show you meet the emission standards in § 1048.101 (a) or (b), respectively. We may require you to test engines using the transient testing procedures to show

you meet the emission standards in § 1048.101(b).

(b) *Modifying a test engine.* Once an engine is selected for testing (see § 1048.310), you may adjust, repair, prepare, or modify it or check its emissions only if one of the following is true:

(1) You document the need for doing so in your procedures for assembling and inspecting all your production engines and make the action routine for all the engines in the engine family.

(2) This subpart otherwise specifically allows your action.

(3) We approve your action in advance.

(c) *Engine malfunction.* If an engine malfunction prevents further emission testing, ask us to approve your decision to either repair the engine or delete it from the test sequence.

(d) *Setting adjustable parameters.* Before any test, we may adjust or require you to adjust any adjustable parameter to any setting within its physically adjustable range.

(1) We may adjust idle speed outside the physically adjustable range as needed until the engine has stabilized emission levels (see paragraph (e) of this section). We may ask you for information needed to establish an alternate minimum idle speed.

(2) We may make or specify adjustments within the physically adjustable range by considering their effect on emission levels, as well as how likely it is someone will make such an adjustment with in-use engines.

(e) *Stabilizing emission levels.* Before you test production-line engines, you may operate the engine to stabilize the emission levels. Using good engineering judgment, operate your engines in a way that represents the way production engines will be used. You may operate each engine for no more than the greater of two periods:

(1) 50 hours.

(2) The number of hours you operated your emission-data engine for certifying the engine family (see 40 CFR part 1065, subpart E).

(f) *Damage during shipment.* If shipping an engine to a remote facility for production-line testing makes necessary an adjustment or repair, you must wait until after the after the initial emission test to do this work. We may waive this requirement if the test would be impossible or unsafe, or if it would permanently damage the engine. Report to us, in your written report under § 1048.345, all adjustments or repairs you make on test engines before each test.

(g) *Retesting after invalid tests.* You may retest an engine if you determine an emission test is invalid. Explain in your written report reasons for invalidating any test and the emission results from all tests. If you retest an engine and, within ten days after testing, ask to substitute results of the new tests for the original ones, we will answer within ten days after we receive your information.

§ 1048.310 How must I select engines for production-line testing?

(a) Use test results from two engines for each engine family to calculate the required sample size for the model year. Update this calculation with each test.

(b) Early in each calendar quarter, randomly select and test two engines from the end of the assembly line for each engine family.

(c) Calculate the required sample size for each engine family. Separately calculate this figure for HC+NO_x and for CO. The required sample size is the greater of these two calculated values. Use the following equation:

$$N = \left[\frac{(t_{95} \times \sigma)}{(x - \text{STD})} \right]^2 + 1$$

Where:

N = Required sample size for the model year.

t₉₅ = 95% confidence coefficient, which depends on the number of tests completed, n, as specified in the table in paragraph (c)(1) of this section. It defines 95% confidence intervals for a one-tail distribution.

x = Mean of emission test results of the sample.

STD = Emission standard.

σ = Test sample standard deviation (see paragraph (c)(2) of this section).

(1) Determine the 95% confidence coefficient, t₉₅, from the following table:

n	t ₉₅	n	t ₉₅	n	t ₉₅
2	6.31	12	1.80	22	1.72
3	2.92	13	1.78	23	1.72
4	2.35	14	1.77	24	1.71
5	2.13	15	1.76	25	1.71
6	2.02	16	1.75	26	1.71
7	1.94	17	1.75	27	1.71
8	1.90	18	1.74	28	1.70
9	1.86	19	1.73	29	1.70
10	1.83	20	1.73	30+	1.70
11	1.81	21	1.72		

(2) Calculate the standard deviation, σ, for the test sample using the following formula:

$$\sigma = \sqrt{\frac{\sum (X_i - x)^2}{n - 1}}$$

Where:

X_i = Emission test result for an individual engine.

n = The number of tests completed in an engine family.

(d) Use final deteriorated test results to calculate the variables in the

equations in paragraph (c) of this section (see § 1048.315(a)).

(e) After each new test, recalculate the required sample size using the updated mean values, standard deviations, and the appropriate 95% confidence coefficient.

(f) Distribute the remaining engine tests evenly throughout the rest of the year. You may need to adjust your schedule for selecting engines if the required sample size changes. Continue to randomly select engines from each engine family; this may involve testing engines that operate on different fuels.

(g) Continue testing any engine family for which the sample mean, \bar{x} , is greater than the emission standard. This applies if the sample mean for either HC+NO_x or for CO is greater than the emission standard. Continue testing until one of the following things happens:

(1) The sample size, n , for an engine family is greater than the required sample size, N , and the sample mean, \bar{x} , is less than or equal to the emission standard.

(2) The engine family does not comply according to § 1048.325.

(3) You test 30 engines from the engine family.

(4) You test one percent of your projected annual U.S.-directed production volume for the engine family.

(5) You choose to declare that the engine family does not comply with emission standards.

(h) You may elect to test more randomly chosen engines than we require. Include these engines in the sample size calculations.

§ 1048.315 How do I know when my engine family does not comply?

(a) Calculate your test results. Round them to the number of decimal places in the emission standard expressed to one more decimal place.

(1) *Initial and final test results.* Calculate and round the test results for each engine. If you do several tests on an engine, calculate the initial test results, then add them together and divide by the number of tests and round for the final test results on that engine.

(2) *Final deteriorated test results.* Apply the deterioration factor for the engine family to the final test results (see § 1048.240(c)).

(b) Construct the following CumSum Equation for each engine family (for HC+NO_x and for CO emissions):

$$C_i = C_{i-1} + X_i - (STD + F)$$

Where:

C_i = The current CumSum statistic.

C_{i-1} = The previous CumSum statistic. Prior to any testing, the CumSum statistic is 0 (i.e. $C_0 = 0$).

X_i = The current emission test result for an individual engine.

STD = Emission standard.

$$F = 0.25 \times \sigma$$

(c) Use final deteriorated test results to calculate the variables in the equation

in paragraph (b) of this section (see § 1048.315(a)).

(d) After each new test, recalculate the CumSum statistic.

(e) If you test more than the required number of engines, include the results from these additional tests in the CumSum Equation.

(f) After each test, compare the current CumSum statistic, C_i , to the recalculated Action Limit, H , defined as $H = 5.0 \times \sigma$.

(g) If the CumSum statistic exceeds the Action Limit in two consecutive tests, the engine family does not comply with the requirements of this part. Tell us within ten working days if this happens.

(h) If you amend the application for certification for an engine family (see § 1048.225), do not change any previous calculations of sample size or CumSum statistics for the model year.

§ 1048.320 What happens if one of my production-line engines fails to meet emission standards?

(a) If you have a production-line engine with final deteriorated test results exceeding one or more emission standards (see § 1048.315(a)), the certificate of conformity is automatically suspended for that failing engine. You must take the following actions before your certificate of conformity can cover that engine:

(1) Correct the problem and retest the engine to show it complies with all emission standards.

(2) Include in your written report a description of the test results and the remedy for each engine (see § 1048.345).

(b) You may at any time ask for a hearing to determine whether the tests and sampling methods were proper (see § 1048.720).

§ 1048.325 What happens if an engine family does not comply?

(a) We may suspend your certificate of conformity for an engine family if it fails to comply under § 1048.315. The suspension may apply to all facilities producing engines from an engine family, even if you find noncompliant engines only at one facility.

(b) We will tell you in writing if we suspend your certificate in whole or in part. We will not suspend a certificate until at least 15 days after the engine family became noncompliant. The suspension is effective when you receive our notice.

(c) Up to 15 days after we suspend the certificate for an engine family, you may ask for a hearing to determine whether the tests and sampling methods were proper (see § 1048.720). If we agree before a hearing that we used erroneous

information in deciding to suspend the certificate, we will reinstate the certificate.

§ 1048.330 May I sell engines from an engine family with a suspended certificate of conformity?

You may sell engines that you produce after we suspend the engine family's certificate of conformity under § 1048.315 only if one of the following occurs:

(a) You test each engine you produce and show it complies with emission standards that apply.

(b) We conditionally reinstate the certificate for the engine family. We may do so if you agree to recall all the affected engines and remedy any noncompliance at no expense to the owner if later testing shows that the engine family still does not comply.

§ 1048.335 How do I ask EPA to reinstate my suspended certificate?

(a) Send us a written report asking us to reinstate your suspended certificate. In your report, identify the reason for noncompliance, propose a remedy, and commit to a date for carrying it out. In your proposed remedy include any quality control measures you propose to keep the problem from happening again.

(b) Give us data from production-line testing that shows the remedied engine family complies with all the emission standards that apply.

§ 1048.340 When may EPA revoke my certificate under this subpart and how may I sell these engines again?

(a) We may revoke your certificate for an engine family in the following cases:

(1) You do not meet the reporting requirements.

(2) Your engine family fails to meet emission standards and your proposed remedy to address a suspended certificate under § 1048.325 is inadequate to solve the problem or requires you to change the engine's design or emission-control system.

(b) To sell engines from an engine family with a revoked certificate of conformity, you must modify the engine family and then show it complies with the requirements of this part.

(1) If we determine your proposed design change may not control emissions for the engine's full useful life, we will tell you within five working days after receiving your report. In this case we will decide whether production-line testing will be enough for us to evaluate the change or whether you need to do more testing.

(2) Unless we require more testing, you may show compliance by testing production-line engines as described in this subpart.

(3) We will issue a new or updated certificate of conformity when you have met these requirements.

§ 1048.345 What production-line testing records must I send to EPA?

(a) Within 30 calendar days of the end of each calendar quarter, send us a report with the following information:

(1) Describe any facility used to test production-line engines and state its location.

(2) State the total U.S.-directed production volume and number of tests for each engine family.

(3) Describe how you randomly selected engines.

(4) Describe your test engines, including the engine family's identification and the engine's model year, build date, model number, identification number, and number of hours of operation before testing for each test engine.

(5) Identify where you accumulated hours of operation on the engines and describe the procedure and schedule you used.

(6) Provide the test number; the date, time and duration of testing; test procedure; initial test results before and after rounding; final test results; and final deteriorated test results for all tests. Provide the emission results for all measured pollutants. Include information for both valid and invalid tests and the reason for any invalidation.

(7) Describe completely and justify any nonroutine adjustment, modification, repair, preparation, maintenance, or test for the test engine if you did not report it separately under this subpart. Include the results of any emission measurements, regardless of the procedure or type of equipment.

(8) Provide the CumSum analysis required in § 1048.315 for each engine family.

(9) Report on each failed engine as described in § 1048.320.

(10) State the date the calendar quarter ended for each engine family.

(b) We may ask you to add information to your written report, so we can determine whether your new engines conform with the requirements of this subpart.

(c) An authorized representative of your company must sign the following statement:

We submit this report under Sections 208 and 213 of the Clean Air Act. Our production-line testing conformed completely with the requirements of 40 CFR part 1048. We have not changed production processes or quality-control procedures for the engine family in a way that might affect the emission control from production

engines. All the information in this report is true and accurate, to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations. (Authorized Company Representative)

(d) Send electronic reports of production-line testing to the Designated Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(e) We will send copies of your reports to anyone from the public who asks for them. We will not release information about your sales or production volumes, which we will consider confidential under 40 CFR part 2.

§ 1048.350 What records must I keep?

(a) Organize and maintain your records as described in this section. We may review your records at any time, so it is important to keep required information readily available.

(b) Keep paper records of your production-line testing for one full year after you complete all the testing required for an engine family in a model year. You may use any additional storage formats or media if you like.

(c) Keep a copy of the written reports described in § 1048.345.

(d) Keep the following additional records:

(1) A description of all test equipment for each test cell that you can use to test production-line engines.

(2) The names of supervisors involved in each test.

(3) The name of anyone who authorizes adjusting, repairing, preparing, or modifying a test engine and the names of all supervisors who oversee this work.

(4) If you shipped the engine for testing, the date you shipped it, the associated storage or port facility, and the date the engine arrived at the testing facility.

(5) Any records related to your production-line tests that are not in the written report.

(6) A brief description of any significant events during testing not otherwise described in the written report or in this section.

(e) If we ask, you must give us projected or actual production figures for an engine family. We may ask you to divide your production figures by power rating, displacement, fuel type, or assembly plant (if you produce engines at more than one plant).

(f) Keep a list of engine identification numbers for all the engines you produce under each certificate of conformity. Give us this list within 30 days if we ask for it.

(g) We may ask you to keep or send other information necessary to implement this subpart.

Subpart E—Testing In-Use Engines

§ 1048.401 What testing requirements apply to my engines that have gone into service?

(a) If you produce engines that are subject to the requirements of this part, you must test them as described in this subpart. This generally involves testing engines in the field or removing them for measurement in a laboratory.

(b) We may suspend or revoke your certificate of conformity for an engine family if in-use testing shows that the family fails to meet emission standards (see § 1048.420) or if you do not meet your obligations under this part. You may use averaging, banking, or trading of in-use emission credits to show that an engine family meets the standards (see § 1048.415).

(c) We may approve an alternate plan for showing that in-use engines comply with the requirements of this part if one of the following is true:

(1) You produce 200 or fewer engines per year in the selected engine family.

(2) Removing the engine from most of the applications for that engine family causes significant, irreparable damage to the equipment.

(3) You identify a unique aspect of your engine applications that keeps you from doing the required in-use testing.

(d) Independent of your responsibility to test in-use engines, we may choose at any time to do our own testing of your in-use engines.

§ 1048.405 How does this program work?

(a) You must test in-use engines from the families we select. We may select up to 25 percent of your engine families in any model year—or one engine family if you have three or fewer families. We will select engine families for testing before the end of the model year. When we select an engine family for testing, we may specify that you preferentially test engines based on fuel type or equipment type. In addition, we may identify specific modes of operation or sampling times.

(b) You may choose to test additional engine families that we do not select. You must explain to us your rationale and propose a testing plan if you want to generate in-use emission credits from this testing (see § 1048.415). You may begin testing these engines 30 days after you propose your testing plan or after we approve it, whichever comes first.

(c) Send us an in-use testing plan within 12 calendar months after we direct you to test a particular engine

family. Complete the testing within 24 calendar months after we approve your plan.

(d) You may need to test engines from more than one model year at a given time.

§ 1048.410 How must I select, prepare, and test my in-use engines?

(a) You may make arrangements to select representative test engines from your own fleet or from other independent sources.

(b) For the selected engine families, select engines that you or your customers have—

(1) Operated for at least 50 percent of the engine family's useful life (see § 1048.101(d));

(2) Not maintained or used in an abnormal way; and

(3) Documented in terms of total hours of operation, maintenance, operating conditions, and storage.

(c) Use the following methods to determine the number of engines you must test in each engine family:

(1) Test at least two engines if you produce 2,000 or fewer engines in the model year from all engine families, or if you produce 500 or fewer engines from the selected engine family. Otherwise, test at least four engines.

(2) If you successfully complete an in-use test program on an engine family and later certify an equivalent engine family with carryover emission data, as described in § 1048.235(c), then test at least one engine instead of the testing rates in paragraph (c)(1) of this section.

(3) If you test the minimum required number of engines and all comply fully with emission standards, you may stop testing.

(4) For each engine that fails any applicable standard, test two more. Regardless of measured emission levels, you do not have to test more than ten engines in an engine family. You may do more tests than we require.

(5) You may concede that the engine family does not comply before testing a total of ten engines.

(d) You may do minimal maintenance to set components of a test engine to specifications for anything we do not consider an adjustable parameter (see § 1048.205(m)). Limit maintenance to what is in the owner's instructions for engines with that amount of service and age. Document all maintenance and adjustments.

(e) Do at least one valid emission test for each test engine.

(f) For a test program on an engine family, choose one of the following methods to test your engines:

(1) Remove the selected engines for testing in a laboratory. Use the

applicable steady-state and transient procedures in subpart F of this part to show compliance with the duty-cycle standards in § 1048.101(a) and (b). We may direct you to measure emissions on the dynamometer using the supplemental test procedures in § 1048.515 to show compliance with the field-testing standards in § 1048.101(c).

(2) Test the selected engines while they remain installed in the equipment. Use the field testing procedures in subpart F of this part. Measure emissions during normal operation of the equipment to show compliance with the field-testing standards in § 1048.101(c). We may direct you to include specific areas of normal operation.

(g) You may ask us to waive parts of the prescribed test procedures if they are not necessary to determine in-use compliance.

(h) Calculate the average emission levels for an engine family from the results for the set of tested engines. Round them to the number of decimal places in the emission standards expressed to one more decimal place.

§ 1048.415 How can I use in-use emission credits?

(a) You may include all engines subject to this part in the voluntary in-use credit program; however, you may generate or use emission credits under this program only if you measure emissions using the transient duty-cycle procedures in Subpart F of this part.

(b) If your average emission level for a family is lower than the emission standard, you may generate positive emission credits for any of three purposes:

(1) *Averaging.* Use these emission credits for averaging in the same model year. If you want to test other engine families to generate additional credits, file your request and plan with us for approval (See § 1048.405).

(2) *Banking.* Reserve a positive balance of unused credits at the end of the model year for banking and then "withdraw" them for a later model year.

(3) *Trading.* Sell your banked credits to another manufacturer or a broker for engines that are also subject to the requirements of this part. A manufacturer may use purchased credits for averaging, banking, or further trading.

(c) You may use emission credits for banking or trading beginning 30 days after you submit the last report required for a model year. We may correct any errors in calculating banked credits, but we may revoke some or all in-use emission credits if we discover

problems or errors in calculating or reporting them.

(d) If your average emission level for a family is higher than the emission standard, you must calculate the negative or required credits for that engine family and use positive emission credits to offset them. You have until the date of the last report required for a model year to complete credit exchanges, so you can show a zero or positive credit balance.

(e) You may not generate positive emission credits for an engine family if it has an average emission level higher than the emission standard for any other pollutant.

(f) In-use emission credits expire after three model years. For example, emission credits you generate with 2007 model year engines are available for showing compliance with 2010 model year engines, but not with 2011 model year engines.

(g) For in-use emission credit trading that results in a negative credit balance, both the buyer and seller are liable, except in cases involving fraud. If a credit buyer is not responsible for causing the negative credit balance, the buyer is only liable to supply additional credits equivalent to any amount of invalid credits involved. If your engine families are involved in a negative trade, we order you to recall those engines.

(h) Calculate positive and negative emission credits according to the following equation and round the results to the nearest metric ton:

$$\text{CREDITS} = \text{SALES} \times (\text{STD} - \text{CL}) \times \text{POWER} \times \text{AF} \times \text{LF} \times \text{UL} \times 10^{-6}$$

Where:

CREDITS = Emission credits in metric tons.

SALES = The number of eligible sales, tracked to the point of first retail sale in the U.S., for the given engine family during the model year.

STD = The emission standard in g/kW-hr.

CL = Average emission level for an in-use testing family in g/kW-hr.

UL = Useful life in hours (see § 1048.101(d)).

POWER = The sales-weighted average rated power for an engine family in kW.

LF = Load factor or fraction of rated engine power utilized in use; use 0.50 for constant-speed engines and 0.32 for all other engines.

AF = Adjustment factor for the number of tests you do, as shown in the table in paragraph (i) of this section; this factor is 1.0 if the engine family has an average emission level higher than the emission standard for any pollutant.

(i) Use the following table for the adjustment factor in the equation in paragraph (h) of this section:

TABLE 1 OF § 1048.415.—ADJUSTMENT FACTORS FOR IN-USE CREDIT CALCULATION

Number of engines tested	Adjustment factor for positive credits
2	0.45
3	0.45
4	0.45
5	0.56
6	0.68
7	0.74
8	0.81
9	0.86
10+	0.90

§ 1048.420 What happens if my in-use engines do not meet requirements?

(a) Determine the reason each in-use engine exceeds the emission standards.

(b) If the average emission levels calculated in § 1048.410(h) exceed any of the emission standards that apply, the engine family is noncompliant. Section 1048.415 describes how you can use in-use averaging, banking, or trading to show that your engine families comply with the standards. Determine the reasons any engine family does not comply and notify us within fifteen days of completing testing on this family.

(c) If you voluntarily test more engine families and these engines do not comply with emission standards, you must treat the family as though it failed under the in-use testing program we direct.

(d) You may voluntarily recall an engine family for emission failures, as described in § 1068.535 of this chapter, unless we have ordered a recall for that family under § 1068.505 of this chapter.

(e) We will consider failure rates, average emission levels, and any defects—among other things—to decide on taking remedial action under this subpart. We may order a recall before or after you complete testing of an engine family if we determine a substantial number of engines do not conform to section 213 of the Act or to this part.

(f) You have the right to a hearing before we suspend or revoke your engine family's certificate of conformity (see § 1048.720).

§ 1048.425 What in-use testing information must I report to EPA?

(a) In a report to us within three months after you finish testing an engine family, do all the following:

(1) Identify the engine family, model, serial number, and date of manufacture.

(2) For each engine inspected or considered for testing, identify whether the diagnostic system was functioning.

(3) Describe the specific reasons for disqualifying any engines for not being properly maintained or used.

(4) For each engine selected for testing, include the following information:

(i) Estimate the hours each engine was used before testing.

(ii) Describe all maintenance, adjustments, modifications, and repairs to each test engine.

(5) State the date and time of each test attempt.

(6) Include the results of all emission testing, including incomplete or invalidated tests, if any.

(b) Notify us separately of any engine families that do not meet emission standards, as described in § 1048.420.

(c) If you participate in the in-use credit program, send us a report within 90 days after completing all in-use testing for the model year. If we do not receive this report on time, we will treat the results of your in-use testing without considering credits. Include required information in your report and show the calculated credits from all your in-use testing for the model year.

(d) If you or we determine a previous report had errors, you must recalculate your credits. We will void any erroneous positive credits and may adjust any erroneous negative credits. Do not recalculate your credits when you update your sales information for in-use testing, unless you made an error in estimating the number of engines you export.

(e) Send electronic reports of in-use testing to the Designated Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(f) We will send copies of your reports to anyone from the public who asks for them. We will not release information about your sales or production volumes, which is all we will consider confidential.

(g) We may ask for more information.

§ 1048.430 What records must I keep?

(a) Organize and maintain your records as described in this section. We may review your records at any time, so it is important to keep required information readily available.

(b) Keep paper records of your in-use testing for one full year after you complete all the testing required for an engine family in a model year. You may use any additional storage formats or media if you like.

(c) Keep a copy of the written reports described in § 1048.425.

(d) Keep the following additional records:

(1) Documents used in the procurement process.

(2) Required records for the in-use credit program described in § 1048.415 if you participate in it.

Subpart F—Test Procedures

§ 1048.501 What procedures must I use to test my engines?

(a) Use the equipment and procedures for spark-ignition engines in part 1065 of this chapter to show your engines meet the duty-cycle emission standards in § 1048.101(a) and (b). Measure HC, NO_x, CO, and CO₂ emissions using the dilute sampling procedures in part 1065 of this chapter. Use the applicable duty cycles in §§ 1048.505 and 1048.510.

(b) We describe in § 1048.515 the supplemental procedures for showing that your engines meet the field-testing emission standards in § 1048.101(c).

(c) Use the fuels specified in 40 CFR part 1065, subpart C, for all the testing and service accumulation we require in this part.

(d) You may use special or alternate procedures, as described in § 1065.10 of this chapter.

(e) We may reject data you generate using alternate procedures if later testing with the procedures in part 1065 of this chapter shows contradictory emission data.

§ 1048.505 What steady-state duty cycles apply for laboratory testing?

(a) Measure emissions by testing the engine on a dynamometer with one or both of the following sets of steady-state duty cycles:

(1) Use the 5-mode duty cycle described in the following table if you certify an engine family for operation only at a single, rated speed:

TABLE 1 OF § 1048.505.—5-MODE DUTY CYCLE FOR CONSTANT-SPEED ENGINES¹

Mode No.	Engine speed	Torque	Minimum time in mode (minutes)	Weighting factors
1	Maximum test	100	5.0	0.05
2	Maximum test	75	5.0	0.25
3	Maximum test	50	5.0	0.30
4	Maximum test	25	5.0	0.30
5	Maximum test	10	5.0	0.10

¹ This duty cycle is analogous to the D2 cycle specified in ISO 8178-4.

(2) Use the 7-mode duty cycle described in the following table for engines from an engine family that will be used only in variable-speed applications:

TABLE 2 OF § 1048.505.—7-MODE DUTY CYCLE¹

Mode No.	Engine speed	Observed torque ²	Minimum time in mode (minutes)	Weighting factors
1	Maximum test speed	25	5.0	0.06
2	Intermediate test speed	100	5.0	0.02
3	Intermediate test speed	75	5.0	0.05
4	Intermediate test speed	50	5.0	0.32
5	Intermediate test speed	25	5.0	0.30
6	Intermediate test speed	10	5.0	0.10
7	Idle	0	5.0	0.15

¹ This duty cycle is analogous to the C2 cycle specified in ISO 8178-4.

² The percent torque is relative to the maximum torque at the given engine speed.

(3) Use both of the duty cycles described in paragraphs (a)(1) and (a)(2) of this section if you will not restrict an engine family to constant-speed or variable-speed applications.

(b) If we test an engine to confirm that it meets the duty-cycle emission standards, we will use the duty cycles that apply for that engine family.

(c) During idle mode, operate the engine with the following parameters:

(1) Hold the speed within your specifications.

(2) Keep the throttle fully closed.

(3) Keep engine torque under 5 percent of the peak torque value at maximum test speed.

(d) For the full-load operating mode, operate the engine at its maximum fueling rate.

(e) See part 1065 of this chapter for detailed specifications of tolerances and calculations.

§ 1048.510 What transient duty cycles apply for laboratory testing?

(a) Starting with the 2007 model year, measure emissions by testing the engine

on a dynamometer with one of the following transient duty cycles:

(1) If you certify an engine family for constant-speed operation only, use the transient duty-cycle described in Appendix I of this part.

(2) For all other engines, use the transient duty-cycle described in Appendix II of this part.

(b) If we test an engine to confirm that it meets the duty-cycle emission standards, we will use the duty cycle that applies for that engine family.

(c) To warm up the engine, operate it for the first 180 seconds of the appropriate duty cycle, then allow it to idle without load for 30 seconds. At the end of the 30-second idling period, start measuring emissions as the engine operates over the prescribed duty cycle.

§ 1048.515 Field-testing procedures.

(a) This section describes the procedures to show that your engines meet the field-testing emission standards in § 1048.101(c). These procedures may include any normal engine operation and ambient

conditions that the engines may experience in use. Paragraph (c) of this section defines the limits of what we will consider normal engine operation and ambient conditions. Measure emissions with one of the following procedures.

(1) Remove the selected engines for testing in a laboratory. This generally involves the same equipment and sampling methods we specify in § 1048.501(a). You can use the engine dynamometer to simulate normal operation, as described in this section.

(2) Test the selected engines while they remain installed in the equipment. Part 1065, subpart J, of this chapter describes the equipment and sampling methods for testing engines in the field. Use fuel meeting the specifications of § 1065.210 of this chapter or a fuel typical of what you would expect the engine to use in service.

(b) Use the test procedures we specify in § 1048.501, except for the provisions we specify in this section.

(c) To comply with the emission standards in § 1048.101(c), an engine's

emissions may not exceed the levels we specify in § 1048.101(c) for any continuous sampling period of at least 120 seconds under the following ranges of operation and operating conditions:

(1) Engine operation during the emission sampling period may include any normal operation, subject to the following restrictions:

(i) Average power must be over 5 percent of rated power.

(ii) Continuous time at idle must not be greater than 120 seconds.

(iii) The sampling period may not begin until the engine has reached stable operating temperatures. For example, this would exclude engine operation after starting until the thermostat starts modulating coolant temperature.

(iv) The sampling period may not include engine starting.

(v) For gasoline-fueled engines, operation at 90 percent or more of maximum power must be less than 10 percent of the total sampling time. You may request our approval for a different power threshold.

(2) Engine testing may occur under any normal conditions without correcting measured emission levels, subject to the following restrictions:

(i) Barometric pressure must be between 600 and 775 mm Hg.

(ii) Ambient air temperature must be between 13° and 35° C.

Subpart G—Compliance Provisions

§ 1048.601 What compliance provisions apply to these engines?

Engine and equipment manufacturers, as well as owners, operators, and rebuilders of these engines, and all other persons, must observe the requirements and prohibitions in part 1068 of this chapter. The compliance provisions in this subpart apply only to the engines we regulate in this part.

§ 1048.605 What are the provisions for exempting engines from the requirements of this part if they are already certified under the motor-vehicle program?

(a) This section applies to you if you are an engine manufacturer. See § 1048.610 if you are not an engine manufacturer.

(b) The only requirements or prohibitions from this part that apply to an engine that is exempt under this section are in this section.

(c) If you meet all the following criteria regarding your new engine, it is exempt under this section:

(1) You must produce it by modifying an engine covered by a valid certificate of conformity under 40 CFR part 86.

(2) You must not make any changes to the certified engine that we could

reasonably expect to increase its exhaust or evaporative emissions. For example, if you make any of the following changes to one of these engines, you do not qualify for this exemption:

(i) Change any fuel system or evaporative system parameters from the certified configuration (this does not apply to refueling emission controls).

(ii) Change any other emission-related components.

(iii) Modify or design the engine cooling system so that temperatures or heat rejection rates are outside the original engine manufacturer's specified ranges.

(3) You must make sure the engine still has the label we require under 40 CFR part 86.

(4) You must make sure that fewer than 50 percent of the engine model's total sales, from all companies, are used in nonroad applications.

(d) If you produce both the engine and vehicle under this exemption, you must do all of the following to keep the exemption valid:

(1) Make sure the original engine label is intact.

(2) Add a permanent supplemental label to the engine in a position where it will remain clearly visible after installation in the equipment. In your engine label, do the following:

(i) Include the heading: "Nonroad Engine Emission Control Information".

(ii) Include your full corporate name and trademark.

(iii) State: "THIS ENGINE WAS ADAPTED FOR NONROAD USE WITHOUT AFFECTING ITS EMISSION CONTROLS."

(iv) State the date you finished modifying the engine (month and year).

(3) Make sure the original and supplemental labels are readily visible after the engine is installed in the equipment or, if equipment obscures the engine's labels, make sure the equipment manufacturer attaches duplicate labels, as described in § 1068.105 of this chapter.

(4) Send the Designated Officer a signed letter by the end of each calendar year (or less often if we tell you) with all the following information:

(i) Identify your full corporate name, address, and telephone number.

(ii) List the engine models you expect to produce under this exemption in the coming year.

(iii) State: "We produce each listed engine model for nonroad application without making any changes that could increase its certified emission levels, as described in 40 CFR 1048.605."

(e) If your engines do not meet the criteria listed in paragraph (c) of this section, they will be subject to the

standards and prohibitions of this part. Producing these engines without a valid exemption or certificate of conformity would violate the prohibitions in § 1068.101 of this chapter.

(f) If you are the original manufacturer of both the highway and nonroad versions of an exempted engine, you must send us emission test data on the applicable nonroad duty cycle(s) (see §§ 1048.505 and 1048.510). You may include the data in your application for certification or in your letter requesting the exemption.

(g) If you are the original manufacturer of an exempted engine that is modified by another company under this exemption, we may require you to send us emission test data on the applicable nonroad duty cycle(s). If we ask for this data, we will allow a reasonable amount of time to collect it.

(h) Make sure the engine exempted under this section meets all applicable requirements from 40 CFR part 86. This applies to engine manufacturers, equipment manufacturers who use these engines, and all other persons as if these engines were used in a motor vehicle.

§ 1048.610 What are the provisions for producing nonroad equipment with engines already certified under the motor-vehicle program?

If you are not an engine manufacturer, you may produce nonroad equipment from complete or incomplete motor vehicles with the motor vehicle engine if you meet three criteria:

(a) The engine or vehicle is certified to 40 CFR part 86.

(b) The engine is not adjusted outside the manufacturer's specifications.

(c) The engine or vehicle is not modified in any way that may affect its emission control. This applies to exhaust and evaporative emission controls, but not refueling emission controls.

§ 1048.615 What are the provisions for exempting engines designed for lawn and garden applications?

This section is intended for engines designed for lawn and garden applications, but it applies to any engines meeting the size criteria in paragraph (a) of this section.

(a) If an engine meets all the following criteria, it is exempt from the requirements of this part:

(1) The engine must have a total displacement of 1,000 cc or less.

(2) The engine must have a rated power at or below 30 kW.

(3) The engine must be in an engine family that has a valid certificate of conformity showing that it meets emission standards for Class II engines under 40 CFR part 90.

(b) The only requirements or prohibitions from this part that apply to an engine that is exempt under this section are in this section.

(c) If your engines do not meet the criteria listed in paragraph (a) of this section, they will be subject to the provisions of this part. Producing these engines without a valid exemption or certificate of conformity would violate the prohibitions in § 1068.101 of this chapter.

(d) Engines exempted under this section are subject to all the requirements affecting engines under 40 CFR part 90. The requirements and restrictions of 40 CFR part 90 apply to anyone manufacturing these engines, anyone manufacturing equipment that uses these engines, and all other persons in the same manner as if these engines had a total rated power at or below 19 kW.

Subpart H—Definitions and Other Reference Information

§ 1048.701 What definitions apply to this part?

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

Adjustable parameter means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation.

Aftertreatment means relating to any system, component, or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Aircraft means any vehicle capable of sustained air travel above treetop heights.

All-terrain vehicle means a nonroad vehicle with three or more wheels and a seat, designed for operation over rough terrain and intended primarily for transportation. This includes both land-based and amphibious vehicles.

Auxiliary emission-control device means any element of design that senses temperature, engine rpm, motive speed, transmission gear, atmospheric pressure, manifold pressure or vacuum, or any other parameter to activate, modulate, delay, or deactivate the operation of any part of the emission-control system. This also includes any other feature that causes in-use emissions to be higher than those

measured under test conditions, except as we allow under this part.

Auxiliary marine engine means a marine engine not used for propulsion.

Blue Sky Series engine means an engine meeting the requirements of § 1048.140.

Broker means any entity that facilitates a trade of emission credits between a buyer and seller.

Calibration means the set of specifications and tolerances specific to a particular design, version, or application of a component or assembly capable of functionally describing its operation over its working range.

Certification means obtaining a certificate of conformity for an engine family that complies with the emission standards and requirements in this part.

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

Constant-speed engine means an engine governed to operate at a single speed.

Crankcase emissions means airborne substances emitted to the atmosphere from any part of the engine crankcase's ventilation or lubrication systems. The crankcase is the housing for the crankshaft and other related internal parts.

Designated Officer means the Manager, Engine Programs Group (6403-J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-control system means any device, system, or element of design that controls or reduces the regulated emissions from an engine.

Emission-data engine means an engine that is tested for certification.

Emission-related maintenance means maintenance that substantially affects emissions or is likely to substantially affect emissions deterioration.

Engine family means a group of engines with similar emission characteristics, as specified in § 1048.230.

Engine manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures an engine for sale in the United States or otherwise introduces a new engine into commerce in the United States. This includes importers.

Fuel system means all components involved in transporting, metering, and mixing the fuel from the fuel tank to the combustion chamber(s), including the fuel tank, fuel tank cap, fuel pump, fuel filters, fuel lines, carburetor or fuel-injection components, and all fuel-system vents.

Good engineering judgment has the meaning we give it in § 1068.5 of this chapter.

High-cost warranted part means a component covered by the emission-related warranty with a replacement cost (at the time of certification) exceeding \$400 (in 1998 dollars). Adjust this value using the most recent annual average consumer price index information published by the U.S. Bureau of Labor Statistics. For this definition, replacement cost includes the retail cost of the part plus labor and standard diagnosis.

Hydrocarbon (HC) means the hydrocarbon group on which the emission standards are based for each fuel type. For gasoline- and LPG-fueled engines, HC means total hydrocarbon (THC). For natural gas-fueled engines, HC means nonmethane hydrocarbon (NMHC). For alcohol-fueled engines, HC means total hydrocarbon equivalent (THCE).

Identification number means a unique specification (for example, model number/serial number combination) that allows someone to distinguish a particular engine from other similar engines.

Intermediate test speed has the meaning we give in § 1065.515 of this chapter.

Marine engine means an engine that someone installs or intends to install on a marine vessel.

Marine vessel means a vehicle that is capable of operation in water but is not capable of operation out of water. Amphibious vehicles are not marine vessels.

Maximum test torque has the meaning we give in § 1065.1000 of this chapter.

Maximum test speed has the meaning we give in § 1065.515 of this chapter.

Model year means one of the following things:

(1) For freshly manufactured engines (see definition of "new nonroad engine," paragraph (1)), model year means one of the following:

(i) Calendar year.

(ii) Your annual new model production period if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For an engine that is converted to a nonroad engine after being placed into service in a motor vehicle, model year means the calendar year in which the engine was originally produced (see definition of "new nonroad engine," paragraph (2)).

(3) For a nonroad engine excluded under § 1048.5 that is later converted to operate in an application that is not excluded, model year means the calendar year in which the engine was originally produced (see definition of "new nonroad engine," paragraph (3)).

(4) For engines that are not freshly manufactured but are installed in new nonroad equipment, model year means the calendar year in which the engine is installed in the new nonroad equipment (see definition of "new nonroad engine," paragraph (4)).

(5) For an engine modified by an importer (not the original engine manufacturer) who has a certificate of conformity for the imported engine (see definition of "new nonroad engine," paragraph (5)), model year means one of the following:

(i) The calendar year in which the importer finishes modifying and labeling the engine.

(ii) Your annual production period for producing engines if it is different than the calendar year; follow the guidelines in paragraph (1)(ii) of this definition.

(6) For an engine you import that does not meet the criteria in paragraphs (1) through (5) of the definition of "new nonroad engine," model year means the calendar year in which the manufacturer completed the original assembly of the engine. In general, this applies to used equipment that you import without conversion or major modification.

Motor vehicle has the meaning we give in § 85.1703(a) of this chapter. In general, *motor vehicle* means a self-propelled vehicle that can transport one or more people or any material, but doesn't include any of the following:

(1) Vehicles having a maximum ground speed over level, paved surfaces no higher than 40 km per hour (25 miles per hour).

(2) Vehicles that lack features usually needed for safe, practical use on streets or highways—for example, safety features required by law, a reverse gear (except for motorcycles), or a differential.

(3) Vehicles whose operation on streets or highways would be unsafe, impractical, or highly unlikely. Examples are vehicles with tracks instead of wheels, very large size, or features associated with military vehicles, such as armor or weaponry.

New nonroad engine means any of the following things:

(1) A freshly manufactured nonroad engine for which the ultimate buyer has never received the equitable or legal title. The engine is no longer new when the ultimate buyer receives this title or

the product is placed into service, whichever comes first.

(2) An engine originally manufactured as a motor vehicle engine that is later intended to be used in a piece of nonroad equipment. The engine is no longer new when it is placed into nonroad service.

(3) A nonroad engine that has been previously placed into service in an application we exclude under § 1048.5, where that engine is installed in a piece of equipment for which these exclusions do not apply. The engine is no longer new when it is placed into nonroad service.

(4) An engine not covered by paragraphs (1) through (3) of this definition that is intended to be installed in new nonroad equipment. The engine is no longer new when the ultimate buyer receives a title for the equipment or the product is placed into service, whichever comes first.

(5) An imported nonroad engine covered by a certificate of conformity issued under this part, where someone other than the original manufacturer modifies the engine after its initial assembly and holds the certificate. The engine is no longer new when it is placed into nonroad service.

(6) An imported nonroad engine that is not covered by a certificate of conformity issued under this part at the time of importation.

New nonroad equipment means either of the following things:

(1) A nonroad vehicle or other piece of equipment for which the ultimate buyer has never received the equitable or legal title. The product is no longer new when the ultimate buyer receives this title or the product is placed into service, whichever comes first.

(2) An imported nonroad piece of equipment with an engine not covered by a certificate of conformity issued under this part at the time of importation and manufactured after the date for applying the requirements of this part.

Noncompliant engine means an engine that was originally covered by a certificate of conformity, but is not in the certified configuration or otherwise does not comply with the conditions of the certificate.

Nonconforming engine means an engine not covered by a certificate of conformity that would otherwise be subject to emission standards.

Nonmethane hydrocarbon means the difference between the emitted mass of total hydrocarbons and the emitted mass of methane.

Nonroad means relating to nonroad engines.

Nonroad engine has the meaning given in § 1068.25 of this chapter. In general this means all internal-combustion engines except motor vehicle engines, stationary engines, or engines used solely for competition. This part does not apply to all nonroad engines (see § 1048.5).

Off-highway motorcycle means a two-wheeled vehicle with a nonroad engine and a seat (excluding marine vessels and aircraft). Note: highway motorcycles are regulated under 40 CFR part 86.

Oxides of nitrogen means nitric oxide (NO) and nitrogen dioxide (NO₂). Oxides of nitrogen are expressed quantitatively as if the NO were in the form of NO₂ (assume a molecular weight for oxides of nitrogen equivalent to that of NO₂).

Placed into service means used for its intended purpose.

Propulsion marine engine means a marine engine that moves a vessel through the water or directs the vessel's movement.

Rated power means the maximum power an engine produces at maximum test speed.

Revoke means to discontinue the certificate for an engine family. If we revoke a certificate, you must apply for a new certificate before continuing to produce the affected vehicles or engines. This does not apply to vehicles or engines you no longer possess.

Round means to round numbers according to ASTM E29-93a, which is incorporated by reference (see § 1048.710), unless otherwise specified.

Scheduled maintenance means adjusting, repairing, removing, disassembling, cleaning, or replacing components or systems that is periodically needed to keep a part from failing or malfunctioning. It also may mean actions you expect are necessary to correct an overt indication of failure or malfunction for which periodic maintenance is not appropriate.

Snowmobile means a vehicle designed to operate outdoors only over snow-covered ground, with a maximum width of 1.5 meters or less.

Spark-ignition means relating to a type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

Stationary engine means an internal combustion engine that is neither a nonroad engine, nor a motor-vehicle engine, nor an engine used solely for competition (see the definition of nonroad engine in § 1068.25 of this

chapter). In general this includes fixed engines and all portable or transportable engines that stay in a single site at a building, structure, facility, or installation for at least a full year; this does not include an engine installed in equipment that has the ability to propel itself. For year-round sources, a full year is 12 consecutive months. For seasonal sources, a full year is a full annual operating period of at least three months. A seasonal source is a site with engines operating only part of the year for at least two consecutive years. If you replace an engine with one that does the same or similar work in the same place, you may apply the previous engine's service to your calculation for residence time.

Stoichiometry means the proportion of a mixture of air and fuel such that the fuel is fully oxidized with no remaining oxygen. For example, stoichiometric combustion in gasoline engines typically occurs at an air-fuel mass ratio of about 14.7.

Suspend means to temporarily discontinue the certificate for an engine family. If we suspend a certificate, you may not sell vehicles or engines from that engine family unless we reinstate the certificate or approve a new one.

Test engine means an engine in a test sample.

Test sample means the collection of engines selected from the population of an engine family for emission testing.

Total hydrocarbon means the combined mass organic compounds measured by our total hydrocarbon test procedure, expressed as a hydrocarbon with a hydrogen-to-carbon mass ratio of 1.85:1.

Total hydrocarbon equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

Ultimate buyer means ultimate purchaser.

Ultimate purchaser means, with respect to any new nonroad equipment or new nonroad engine, the first person who in good faith purchases such new nonroad equipment or new nonroad engine for purposes other than resale.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

U.S.-directed production volume means the number of engine units, subject to the requirements of this part, produced by a manufacturer for which the manufacturer has a reasonable assurance that sale was or will be made to ultimate buyers in the United States.

Useful life means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years. It is the period during which a new engine is required to comply with all applicable emission standards.

Void means to invalidate a certificate or an exemption. If we void a certificate, all the vehicles produced under that engine family for that model year are considered noncompliant, and you are liable for each vehicle produced under the certificate and may face civil or criminal penalties or both. If we void an exemption, all the vehicles produced under that exemption are considered uncertified (or nonconforming), and you are liable for each vehicle produced under the exemption and may face civil or criminal penalties or both. You may not produce any additional vehicles using the voided exemption.

Volatile liquid fuel means any fuel other than diesel or biodiesel that is a liquid at atmospheric pressure.

§ 1048.705 What symbols, acronyms, and abbreviations does this part use?

The following symbols, acronyms, and abbreviations apply to this part:

°C degrees Celsius.
 ASTM American Society for Testing and Materials.
 cc cubic centimeters.
 CO carbon monoxide.
 CO₂ carbon dioxide.
 EPA Environmental Protection Agency.
 g/kw-hr grams per kilowatt-hour.
 LPG liquefied petroleum gas.
 m meters.
 mm Hg millimeters of mercury.
 NMHC nonmethane hydrocarbons.
 NO_x oxides of nitrogen (NO and NO₂).
 rpm revolutions per minute.
 SAE Society of Automotive Engineers.
 SI spark-ignition.
 THC total hydrocarbon.
 THCE total hydrocarbon equivalent.
 U.S.C. United States Code.

§ 1048.710 What materials does this part reference?

We have incorporated by reference the documents listed in this section. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at U.S. EPA, OAR, Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460 or

Office of the Federal Register, 800 N. Capitol St., NW, 7th Floor, Suite 700, Washington, DC.

(a) **ASTM material.** Table 1 of § 1048.710 lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. The second column is for information only and may not include all locations. Anyone may receive copies of these materials from American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103. Table 1 follows:

TABLE 1 OF § 1048.710.—ASTM MATERIALS

Document No. and name	Part reference
ASTM E29-93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	1048.240, 1048.315, 1048.345, 1048.410, 1048.415

(b) **ISO material.** Table 2 of § 1048.710 lists material from the International Organization for Standardization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the section of this part where we reference it. The second column is for information only and may not be all-inclusive. Anyone may receive copies of these materials from International Organization for Standardization, Case Postale 56, CH-1211 Geneva 20, Switzerland. Table 2 follows:

TABLE 2 OF § 1048.710.—ISO MATERIALS

Document No. and name	Part 1048 reference
ISO 9141-2 February 1994, Road vehicles—Diagnostic systems Part 2.	1048.110
ISO 14230-4 June 2000, Road vehicles—Diagnostic systems—KWP 2000 requirements for emission-related systems.	1048.110

§ 1048.715 How should I request EPA to keep my information confidential?

(a) Clearly show what you consider confidential by marking, circling, bracketing, stamping, or some other

method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in § 2.204 of this chapter.

§ 1048.720 How do I request a public hearing?

(a) File a request for a hearing with the Designated Officer within 15 days of a decision to deny, suspend, revoke, or void your certificate. If you ask later, we may give you a hearing for good cause, but we do not have to.

(b) Include the following in your request for a public hearing:

(1) State which engine family is involved.

(2) State the issues you intend to raise. We may limit these issues, as described elsewhere in this part.

(3) Summarize the evidence supporting your position and state why you believe this evidence justifies granting or reinstating the certificate.

(c) We will hold the hearing as described in 40 CFR part 1068, subpart F.

Appendix I to Part 1048—Transient Duty Cycle for Constant-Speed Engines

The following table shows the transient duty-cycle for constant-speed engines, as described in § 1048.510:

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)
1	58	5	25	93	30
2	58	5	26	93	97
3	58	5	27	93	98
4	58	5	28	93	99
5	58	5	29	93	100
6	58	5	30	93	101
7	58	5	31	93	102
8	58	5	32	93	103
9	58	5	33	93	104
10	58	5	34	93	105
11	58	5	35	93	106
12	65	8	36	93	107
13	72	9	37	93	108
14	79	12	38	93	109
15	86	14	39	93	110
16	93	16	40	93	111
17	93	16	41	93	112
18	93	16	42	93	113
19	93	16	43	93	114
20	93	16	44	93	115
21	93	16	45	93	116
22	93	16	46	93	117
23	93	16	47	93	118
24	93	16	48	93	119
			49	94	120
			50	93	121
			51	93	122
			52	93	123
			53	93	124
			54	93	125
			55	93	126
			56	93	127
			57	93	128
			58	93	129
			59	93	130
			60	93	131
			61	93	132
			62	93	133
			63	93	134
			64	93	135
			65	93	136
			66	93	137
			67	93	138
			68	93	139
			69	93	140
			70	93	141
			71	93	142
			72	93	143
			73	93	144
			74	93	145
			75	93	146
			76	93	147
			77	93	148
			78	93	149
			79	93	150
			80	93	151
			81	93	152
			82	93	153
			83	93	154
			84	93	155
			85	93	156
			86	96	157
			87	95	158
			88	95	159
			89	95	160
			90	95	161
			91	95	162
			92	95	163
			93	95	164
			94	95	165
			95	95	166
			96	95	167
					168

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)
169	93	20	241	94	27	313	93	31
170	93	20	242	93	22	314	93	30
171	93	18	243	93	23	315	93	23
172	93	19	244	93	21	316	93	23
173	93	19	245	93	22	317	93	36
174	93	16	246	95	22	318	93	32
175	93	16	247	95	16	319	93	25
176	93	16	248	95	12	320	93	31
177	93	18	249	95	10	321	93	33
178	93	21	250	95	9	322	93	31
179	93	20	251	95	8	323	93	27
180	93	20	252	96	7	324	93	24
181	93	17	253	95	7	325	93	19
182	93	19	254	95	6	326	96	21
183	93	17	255	92	42	327	96	16
184	93	18	256	93	36	328	95	12
185	93	16	257	93	33	329	95	10
186	93	16	258	92	60	330	95	8
187	93	16	259	93	48	331	95	8
188	93	17	260	93	36	332	95	7
189	93	16	261	93	30	333	95	7
190	93	17	262	93	28	334	95	6
191	93	18	263	93	24	335	95	6
192	93	17	264	93	24	336	95	6
193	93	16	265	93	23	337	87	6
194	93	17	266	93	23	338	57	6
195	93	17	267	93	25	339	58	6
196	93	22	268	93	27	340	58	6
197	93	19	269	93	29	341	58	6
198	93	19	270	93	26	342	58	6
199	95	21	271	93	26	343	58	6
200	95	16	272	93	21	344	58	6
201	95	12	273	93	23	345	58	6
202	95	10	274	93	23	346	58	6
203	96	8	275	94	23	347	58	6
204	96	7	276	93	40	348	58	6
205	95	7	277	94	67	349	58	6
206	96	7	278	93	46	350	58	6
207	95	6	279	93	38	351	58	6
208	96	6	280	93	29	352	95	73
209	96	6	281	93	28	353	93	65
210	88	6	282	93	27	354	93	52
211	89	48	283	93	29	355	93	38
212	93	34	284	93	28	356	93	30
213	93	27	285	94	34	357	93	31
214	93	26	286	93	31	358	93	26
215	93	25	287	93	30	359	93	21
216	93	22	288	94	42	360	93	22
217	93	23	289	93	31	361	93	26
218	93	21	290	93	29	362	93	23
219	93	21	291	93	27	363	93	19
220	93	23	292	93	23	364	93	27
221	93	23	293	93	23	365	93	42
222	93	23	294	93	20	366	93	29
223	93	23	295	93	20	367	94	25
224	93	23	296	93	23	368	94	26
225	93	22	297	93	23	369	94	29
226	93	22	298	93	24	370	93	28
227	93	24	299	93	25	371	93	23
228	93	23	300	93	20	372	93	21
229	93	23	301	93	25	373	93	26
230	93	21	302	93	23	374	93	23
231	93	20	303	93	23	375	93	20
232	93	20	304	93	24	376	94	23
233	93	20	305	93	28	377	93	18
234	93	22	306	93	23	378	93	19
235	93	26	307	93	24	379	93	23
236	93	22	308	93	34	380	93	19
237	93	20	309	93	31	381	93	16
238	93	18	310	93	35	382	93	25
239	93	22	311	93	31	383	93	22
240	93	20	312	93	32	384	93	20

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)
385	93	25	457	93	36	529	93	25
386	94	28	458	93	28	530	93	21
387	93	23	459	93	25	531	93	17
388	93	23	460	93	35	532	93	15
389	93	25	461	93	34	533	93	15
390	93	23	462	93	29	534	93	16
391	93	20	463	93	37	535	93	15
392	93	19	464	93	36	536	93	14
393	93	24	465	93	38	537	93	15
394	93	20	466	93	31	538	93	16
395	93	18	467	93	29	539	94	15
396	93	21	468	93	34	540	93	45
397	95	22	469	93	36	541	93	45
398	96	16	470	93	34	542	93	41
399	96	12	471	93	31	543	93	33
400	95	10	472	93	26	544	93	26
401	96	9	473	93	21	545	93	21
402	95	8	474	94	16	546	93	20
403	96	7	475	96	19	547	93	17
404	96	7	476	96	15	548	93	16
405	96	6	477	95	11	549	93	17
406	96	6	478	96	10	550	93	16
407	95	6	479	95	8	551	93	14
408	91	6	480	95	7	552	93	16
409	58	6	481	95	7	553	93	15
410	58	6	482	96	7	554	93	14
411	58	6	483	96	6	555	93	16
412	58	6	484	96	6	556	93	15
413	58	6	485	95	6	557	93	14
414	58	6	486	85	6	558	93	13
415	58	6	487	56	74	559	93	14
416	58	6	488	93	52	560	93	14
417	58	6	489	93	42	561	93	15
418	58	6	490	93	36	562	93	17
419	58	6	491	93	35	563	93	17
420	58	6	492	93	33	564	93	22
421	58	6	493	93	38	565	93	22
422	58	6	494	93	40	566	93	19
423	58	6	495	93	29	567	93	19
424	58	6	496	93	23	568	93	20
425	58	6	497	93	23	569	93	18
426	58	6	498	93	24	570	93	20
427	58	6	499	93	24	571	93	20
428	58	6	500	93	20	572	93	42
429	58	6	501	93	19	573	93	32
430	58	6	502	93	16	574	93	25
431	58	6	503	93	21	575	93	26
432	58	6	504	93	23	576	93	23
433	58	6	505	93	24	577	93	21
434	58	6	506	93	22	578	93	23
435	58	6	507	93	18	579	93	19
436	58	6	508	93	21	580	93	21
437	58	6	509	95	18	581	93	20
438	58	6	510	95	20	582	93	20
439	58	6	511	95	15	583	93	20
440	58	6	512	96	11	584	93	18
441	58	6	513	95	10	585	93	18
442	58	6	514	96	8	586	93	21
443	93	66	515	95	7	587	93	19
444	93	48	516	95	7	588	93	21
445	93	40	517	95	7	589	93	19
446	93	34	518	95	6	590	93	19
447	93	28	519	96	6	591	93	18
448	93	23	520	96	6	592	93	18
449	93	28	521	83	6	593	93	17
450	93	27	522	56	6	594	93	16
451	93	23	523	58	6	595	93	16
452	93	19	524	72	54	596	93	15
453	93	25	525	94	51	597	93	16
454	93	24	526	93	42	598	93	19
455	93	22	527	93	42	599	93	52
456	93	31	528	93	31	600	93	45

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)
601	95	39	673	95	22	745	95	27
602	95	39	674	95	19	746	95	22
603	95	39	675	94	17	747	95	18
604	95	39	676	95	27	748	95	19
605	94	30	677	95	24	749	95	25
606	95	30	678	98	19	750	94	25
607	95	29	679	98	19	751	95	21
608	95	24	680	98	14	752	95	22
609	94	30	681	98	11	753	95	27
610	95	28	682	98	9	754	95	27
611	94	25	683	98	8	755	95	27
612	94	29	684	98	7	756	95	24
613	95	32	685	98	6	757	94	20
614	95	33	686	98	6	758	94	23
615	95	44	687	98	6	759	94	26
616	99	37	688	98	6	760	95	25
617	98	27	689	98	5	761	95	25
618	98	19	690	81	5	762	95	21
619	98	13	691	49	5	763	95	28
620	98	11	692	78	48	764	94	39
621	98	9	693	95	37	765	95	32
622	98	7	694	95	31	766	95	24
623	98	7	695	94	32	767	95	19
624	98	6	696	94	34	768	98	20
625	98	6	697	95	29	769	98	17
626	98	6	698	95	25	770	98	12
627	98	5	699	94	26	771	98	10
628	69	6	700	95	28	772	98	8
629	49	5	701	95	27	773	98	7
630	51	5	702	94	28	774	98	6
631	51	5	703	95	30	775	98	6
632	51	5	704	95	27	776	95	61
633	51	6	705	95	26	777	94	51
634	51	6	706	95	27	778	95	40
635	51	6	707	95	25	779	94	35
636	51	6	708	95	26	780	94	36
637	51	5	709	95	25	781	94	32
638	51	5	710	95	23	782	95	24
639	51	5	711	95	20	783	94	19
640	51	5	712	95	23	784	94	19
641	51	6	713	95	20	785	95	19
642	51	6	714	95	18	786	95	19
643	51	6	715	94	22	787	94	18
644	51	6	716	95	19	788	94	20
645	51	5	717	95	23	789	94	23
646	51	6	718	95	27	790	94	22
647	51	5	719	95	26	791	95	23
648	51	6	720	95	23	792	94	20
649	51	5	721	95	20	793	94	18
650	96	35	722	99	23	794	95	16
651	95	29	723	98	20	795	95	17
652	95	26	724	98	14	796	94	16
653	95	31	725	98	11	797	94	16
654	95	34	726	98	9	798	94	17
655	95	29	727	98	8	799	94	18
656	95	29	728	98	7	800	94	21
657	95	30	729	98	6	801	95	21
658	95	24	730	98	6	802	94	19
659	95	19	731	98	6	803	95	18
660	95	23	732	98	5	804	94	19
661	95	21	733	98	5	805	95	22
662	95	22	734	73	6	806	95	21
663	95	19	735	49	5	807	95	19
664	95	18	736	50	77	808	94	20
665	95	20	737	95	39	809	94	22
666	94	60	738	95	30	810	94	22
667	95	48	739	95	28	811	94	22
668	95	39	740	94	31	812	95	23
669	95	36	741	95	36	813	94	22
670	95	27	742	95	36	814	95	22
671	95	22	743	95	30	815	95	19
672	95	19	744	95	26	816	95	16

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)
817	95	14	889	95	19	961	98	19
818	95	18	890	94	18	962	98	14
819	95	18	891	94	20	963	98	11
820	94	20	892	94	26	964	98	9
821	94	22	893	95	29	965	98	7
822	94	19	894	94	32	966	98	7
823	95	18	895	95	26	967	98	6
824	95	17	896	95	34	968	98	6
825	95	19	897	95	30	969	98	6
826	95	19	898	95	24	970	98	5
827	95	19	899	95	19	971	98	5
828	94	19	900	94	17	972	82	5
829	94	21	901	94	16	973	49	5
830	94	19	902	98	19	974	51	6
831	94	17	903	98	17	975	51	6
832	94	18	904	98	12	976	51	6
833	94	21	905	98	10	977	51	5
834	94	19	906	98	8	978	51	6
835	95	18	907	98	7	979	72	58
836	95	19	908	98	6	980	94	36
837	95	17	909	98	6	981	95	28
838	94	15	910	98	6	982	95	24
839	94	17	911	98	5	983	95	25
840	95	19	912	98	5	984	95	26
841	94	22	913	98	5	985	94	30
842	94	21	914	69	5	986	94	26
843	94	18	915	49	5	987	95	34
844	94	16	916	51	5	988	95	57
845	95	14	917	51	6	989	95	45
846	95	14	918	51	6	990	94	37
847	94	19	919	69	75	991	95	34
848	95	20	920	95	70	992	95	27
849	95	23	921	95	57	993	95	27
850	98	23	922	94	49	994	95	29
851	98	22	923	94	38	995	98	22
852	98	16	924	95	43	996	94	84
853	98	12	925	94	51	997	94	74
854	98	9	926	94	41	998	95	62
855	98	8	927	98	42	999	94	51
856	98	7	928	95	89	1000	95	50
857	98	6	929	95	66	1001	95	81
858	98	6	930	94	52	1002	94	65
859	98	6	931	95	41	1003	95	49
860	98	5	932	95	34	1004	94	56
861	98	5	933	95	34	1005	95	65
862	80	5	934	94	30	1006	94	59
863	49	5	935	94	30	1007	99	58
864	51	5	936	95	29	1008	98	41
865	51	5	937	94	28	1009	98	27
866	51	6	938	95	24	1010	98	19
867	51	6	939	94	34	1011	98	13
868	51	6	940	95	26	1012	98	11
869	51	6	941	94	36	1013	98	9
870	51	5	942	95	27	1014	98	8
871	51	6	943	95	25	1015	98	7
872	51	7	944	95	26	1016	98	6
873	96	45	945	94	21	1017	98	6
874	94	44	946	94	19	1018	98	6
875	94	34	947	98	21	1019	71	6
876	94	41	948	93	53	1020	49	5
877	95	44	949	94	45	1021	51	6
878	94	32	950	94	35	1022	51	6
879	95	26	951	95	28	1023	51	6
880	94	20	952	95	23	1024	51	6
881	95	29	953	95	20	1025	51	6
882	95	27	954	95	17	1026	51	6
883	95	21	955	94	19	1027	51	6
884	95	34	956	94	18	1028	51	6
885	95	31	957	94	18	1029	51	6
886	94	26	958	94	18	1030	51	6
887	95	22	959	94	19	1031	51	5
888	95	23	960	97	17	1032	51	6

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)
1033	51	5	1105	95	32	1177	95	30
1034	51	6	1106	94	29	1178	95	23
1035	51	6	1107	94	26	1179	94	19
1036	51	6	1108	94	26	1180	95	25
1037	51	5	1109	94	24	1181	94	29
1038	51	5	1110	98	52	1182	98	27
1039	51	6	1111	94	41	1183	95	89
1040	51	6	1112	99	35	1184	95	74
1041	69	59	1113	95	58	1185	94	60
1042	94	48	1114	95	58	1186	94	48
1043	95	34	1115	98	57	1187	94	41
1044	95	29	1116	98	38	1188	94	29
1045	95	26	1117	98	26	1189	94	24
1046	94	27	1118	93	63	1190	95	19
1047	95	31	1119	94	59	1191	94	21
1048	95	26	1120	98	100	1192	95	29
1049	95	34	1121	94	73	1193	95	28
1050	95	29	1122	98	53	1194	95	27
1051	95	31	1123	94	76	1195	94	23
1052	95	29	1124	95	61	1196	95	25
1053	95	35	1125	94	49	1197	95	26
1054	95	38	1126	94	37	1198	94	22
1055	94	41	1127	97	50	1199	95	19
1056	95	28	1128	98	36	1200	94	17
1057	95	36	1129	98	25			
1058	94	30	1130	98	18			
1059	94	26	1131	98	12			
1060	94	33	1132	98	10			
1061	95	34	1133	98	8			
1062	95	27	1134	98	7			
1063	98	26	1135	98	7			
1064	98	19	1136	98	6			
1065	98	13	1137	98	6			
1066	98	11	1138	98	6			
1067	98	9	1139	80	6			
1068	98	7	1140	49	6			
1069	98	7	1141	78	61			
1070	98	6	1142	95	50			
1071	98	6	1143	94	43	0	0	0
1072	98	6	1144	94	42	1	0	0
1073	98	5	1145	94	31	2	0	0
1074	89	6	1146	95	30	3	0	0
1075	49	5	1147	95	34	4	0	0
1076	51	6	1148	95	28	5	0	0
1077	51	6	1149	95	27	6	0	0
1078	51	6	1150	94	27	7	0	0
1079	51	6	1151	95	31	8	0	0
1080	51	6	1152	95	42	9	1	8
1081	51	6	1153	94	41	10	6	54
1082	51	6	1154	95	37	11	8	61
1083	50	6	1155	95	43	12	34	59
1084	51	6	1156	95	34	13	22	46
1085	51	6	1157	95	31	14	5	51
1086	51	6	1158	95	27	15	18	51
1087	51	6	1159	95	23	16	31	50
1088	51	6	1160	95	27	17	30	56
1089	51	6	1161	96	38	18	31	49
1090	51	6	1162	95	40	19	25	66
1091	56	74	1163	95	39	20	58	55
1092	95	56	1164	95	26	21	43	31
1093	94	49	1165	95	33	22	16	45
1094	95	47	1166	94	28	23	24	38
1095	94	43	1167	94	34	24	24	27
1096	94	33	1168	98	73	25	30	33
1097	95	50	1169	95	49	26	45	65
1098	94	40	1170	95	51	27	50	49
1099	95	33	1171	94	55	28	23	42
1100	95	24	1172	95	48	29	13	42
1101	94	22	1173	95	35	30	9	45
1102	94	22	1174	95	39	31	23	30
1103	94	25	1175	95	39	32	37	45
1104	95	27	1176	94	41	33	44	50

Appendix II to Part 1048—Transient Duty Cycle for Engines That Are Not Constant-Speed Engines

The following table shows the transient duty-cycle for engines that are not constant-speed engines, as described in § 1048.510:

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)
0	0	0
1	0	0
2	0	0
3	0	0
4	0	0
5	0	0
6	0	0
7	0	0
8	0	0
9	1	8
10	6	54
11	8	61
12	34	59
13	22	46
14	5	51
15	18	51
16	31	50
17	30	56
18	31	49
19	25	66
20	58	55
21	43	31
22	16	45
23	24	38
24	24	27
25	30	33
26	45	65
27	50	49
28	23	42
29	13	42
30	9	45
31	23	30
32	37	45
33	44	50

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)
34	49	52	106	10	42	178	86	80
35	55	49	107	18	27	179	96	75
36	61	46	108	3	50	180	89	27
37	66	38	109	11	41	181	66	17
38	42	33	110	34	29	182	50	18
39	17	41	111	51	57	183	36	25
40	17	37	112	67	63	184	36	24
41	7	50	113	61	32	185	38	40
42	20	32	114	44	31	186	40	50
43	5	55	115	48	54	187	27	48
44	30	42	116	69	65	188	19	48
45	44	53	117	85	65	189	23	50
46	45	56	118	81	29	190	19	45
47	41	52	119	74	21	191	6	51
48	24	41	120	62	23	192	24	48
49	15	40	121	76	58	193	49	67
50	11	44	122	96	75	194	47	49
51	32	31	123	100	77	195	22	44
52	38	54	124	100	27	196	25	40
53	38	47	125	100	79	197	38	54
54	9	55	126	100	79	198	43	55
55	10	50	127	100	81	199	40	52
56	33	55	128	100	57	200	14	49
57	48	56	129	99	52	201	11	45
58	49	47	130	81	35	202	7	48
59	33	44	131	69	29	203	26	41
60	52	43	132	47	22	204	41	59
61	55	43	133	34	28	205	53	60
62	59	38	134	27	37	206	44	54
63	44	28	135	83	60	207	22	40
64	24	37	136	100	74	208	24	41
65	12	44	137	100	7	209	32	53
66	9	47	138	100	2	210	44	74
67	12	52	139	70	18	211	57	25
68	34	21	140	23	39	212	22	49
69	29	44	141	5	54	213	29	45
70	44	54	142	11	40	214	19	37
71	54	62	143	11	34	215	14	43
72	62	57	144	11	41	216	36	40
73	72	56	145	19	25	217	43	63
74	88	71	146	16	32	218	42	49
75	100	69	147	20	31	219	15	50
76	100	34	148	21	38	220	19	44
77	100	42	149	21	42	221	47	59
78	100	54	150	9	51	222	67	80
79	100	58	151	4	49	223	76	74
80	100	38	152	2	51	224	87	66
81	83	17	153	1	58	225	98	61
82	61	15	154	21	57	226	100	38
83	43	22	155	29	47	227	97	27
84	24	35	156	33	45	228	100	53
85	16	39	157	16	49	229	100	72
86	15	45	158	38	45	230	100	49
87	32	34	159	37	43	231	100	4
88	14	42	160	35	42	232	100	13
89	8	48	161	39	43	233	87	15
90	5	51	162	51	49	234	53	26
91	10	41	163	59	55	235	33	27
92	12	37	164	65	54	236	39	19
93	4	47	165	76	62	237	51	33
94	3	49	166	84	59	238	67	54
95	3	50	167	83	29	239	83	60
96	4	49	168	67	35	240	95	52
97	4	48	169	84	54	241	100	50
98	8	43	170	90	58	242	100	36
99	2	51	171	93	43	243	100	25
100	5	46	172	90	29	244	85	16
101	8	41	173	66	19	245	62	16
102	4	47	174	52	16	246	40	26
103	3	49	175	49	17	247	56	39
104	6	45	176	56	38	248	81	75
105	3	48	177	73	71	249	98	86

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)
250	100	76	322	40	52	394	62	4
251	100	51	323	50	50	395	40	6
252	100	78	324	11	53	396	49	10
253	100	83	325	12	45	397	36	5
254	100	100	326	5	50	398	27	4
255	100	66	327	1	55	399	29	3
256	100	85	328	7	55	400	22	2
257	100	72	329	62	60	401	13	3
258	100	45	330	80	28	402	37	36
259	98	58	331	23	37	403	90	26
260	60	30	332	39	58	404	41	2
261	43	32	333	47	24	405	25	2
262	71	36	334	59	51	406	29	2
263	44	32	335	58	68	407	38	7
264	24	38	336	36	52	408	50	13
265	42	17	337	18	42	409	55	10
266	22	51	338	36	52	410	29	3
267	13	53	339	59	73	411	24	7
268	23	45	340	72	85	412	51	16
269	29	50	341	85	92	413	62	15
270	28	42	342	99	90	414	72	35
271	21	55	343	100	72	415	91	74
272	34	57	344	100	18	416	100	73
273	44	47	345	100	76	417	100	8
274	19	46	346	100	64	418	98	11
275	13	44	347	100	87	419	100	59
276	25	36	348	100	97	420	100	98
277	43	51	349	100	84	421	100	99
278	55	73	350	100	100	422	100	75
279	68	72	351	100	91	423	100	95
280	76	63	352	100	83	424	100	100
281	80	45	353	100	93	425	100	97
282	83	40	354	100	100	426	100	90
283	78	26	355	94	43	427	100	86
284	60	20	356	72	10	428	100	82
285	47	19	357	77	3	429	97	43
286	52	25	358	48	2	430	70	16
287	36	30	359	29	5	431	50	20
288	40	26	360	59	19	432	42	33
289	45	34	361	63	5	433	89	64
290	47	35	362	35	2	434	89	77
291	42	28	363	24	3	435	99	95
292	46	38	364	28	2	436	100	41
293	48	44	365	36	16	437	77	12
294	68	61	366	54	23	438	29	37
295	70	47	367	60	10	439	16	41
296	48	28	368	33	1	440	16	38
297	42	22	369	23	0	441	15	36
298	31	29	370	16	0	442	18	44
299	22	35	371	11	0	443	4	55
300	28	28	372	20	0	444	24	26
301	46	46	373	25	2	445	26	35
302	62	69	374	40	3	446	15	45
303	76	81	375	33	4	447	21	39
304	88	85	376	34	5	448	29	52
305	98	81	377	46	7	449	26	46
306	100	74	378	57	10	450	27	50
307	100	13	379	66	11	451	13	43
308	100	11	380	75	14	452	25	36
309	100	17	381	79	11	453	37	57
310	99	3	382	80	16	454	29	46
311	80	7	383	92	21	455	17	39
312	62	11	384	99	16	456	13	41
313	63	11	385	83	2	457	19	38
314	64	16	386	71	2	458	28	35
315	69	43	387	69	4	459	8	51
316	81	67	388	67	4	460	14	36
317	93	74	389	74	16	461	17	47
318	100	72	390	86	25	462	34	39
319	94	27	391	97	28	463	34	57
320	73	15	392	100	15	464	11	70
321	40	33	393	83	2	465	13	51

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)
466	13	68	538	54	49	610	52	80
467	38	44	539	61	50	611	52	83
468	53	67	540	64	54	612	49	57
469	29	69	541	67	54	613	48	46
470	19	65	542	68	52	614	37	36
471	52	45	543	60	53	615	25	44
472	61	79	544	52	50	616	14	53
473	29	70	545	45	49	617	13	64
474	15	53	546	38	45	618	23	56
475	15	60	547	32	45	619	21	63
476	52	40	548	26	53	620	18	67
477	50	61	549	23	56	621	20	54
478	13	74	550	30	49	622	16	67
479	46	51	551	33	55	623	26	56
480	60	73	552	35	59	624	41	65
481	33	84	553	33	65	625	28	62
482	31	63	554	30	67	626	19	60
483	41	42	555	28	59	627	33	56
484	26	69	556	25	58	628	37	70
485	23	65	557	23	56	629	24	79
486	48	49	558	22	57	630	28	57
487	28	57	559	19	63	631	40	57
488	16	67	560	14	63	632	40	58
489	39	48	561	31	61	633	28	44
490	47	73	562	35	62	634	25	41
491	35	87	563	21	80	635	29	53
492	26	73	564	28	65	636	31	55
493	30	61	565	7	74	637	26	64
494	34	49	566	23	54	638	20	50
495	35	66	567	38	54	639	16	53
496	56	47	568	14	78	640	11	54
497	49	64	569	38	58	641	13	53
498	59	64	570	52	75	642	23	50
499	42	69	571	59	81	643	32	59
500	6	77	572	66	69	644	36	63
501	5	59	573	54	44	645	33	59
502	17	59	574	48	34	646	24	52
503	45	53	575	44	33	647	20	52
504	21	62	576	40	40	648	22	55
505	31	60	577	28	58	649	30	53
506	53	68	578	27	63	650	37	59
507	48	79	579	35	45	651	41	58
508	45	61	580	20	66	652	36	54
509	51	47	581	15	60	653	29	49
510	41	48	582	10	52	654	24	53
511	26	58	583	22	56	655	14	57
512	21	62	584	30	62	656	10	54
513	50	52	585	21	67	657	9	55
514	39	65	586	29	53	658	10	57
515	23	65	587	41	56	659	13	55
516	42	62	588	15	67	660	15	64
517	57	80	589	24	56	661	31	57
518	66	81	590	42	69	662	19	69
519	64	62	591	39	83	663	14	59
520	45	42	592	40	73	664	33	57
521	33	42	593	35	67	665	41	65
522	27	57	594	32	61	666	39	64
523	31	59	595	30	65	667	39	59
524	41	53	596	30	72	668	39	51
525	45	72	597	48	51	669	28	41
526	48	73	598	66	58	670	19	49
527	46	90	599	62	71	671	27	54
528	56	76	600	36	63	672	37	63
529	64	76	601	17	59	673	32	74
530	69	64	602	16	50	674	16	70
531	72	59	603	16	62	675	12	67
532	73	58	604	34	48	676	13	60
533	71	56	605	51	66	677	17	56
534	66	48	606	35	74	678	15	62
535	61	50	607	15	56	679	25	47
536	55	56	608	19	54	680	27	64
537	52	52	609	43	65	681	14	71

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)
682	5	65	754	6	70	826	39	35
683	6	57	755	12	55	827	30	34
684	6	57	756	24	50	828	33	46
685	15	52	757	28	60	829	44	56
686	22	61	758	28	64	830	50	56
687	14	77	759	23	60	831	44	52
688	12	67	760	20	56	832	38	46
689	12	62	761	26	50	833	33	44
690	14	59	762	28	55	834	29	45
691	15	58	763	18	56	835	24	46
692	18	55	764	15	52	836	18	52
693	22	53	765	11	59	837	9	55
694	19	69	766	16	59	838	10	54
695	14	67	767	34	54	839	20	53
696	9	63	768	16	82	840	27	58
697	8	56	769	15	64	841	29	59
698	17	49	770	36	53	842	30	62
699	25	55	771	45	64	843	30	65
700	14	70	772	41	59	844	27	66
701	12	60	773	34	50	845	32	58
702	22	57	774	27	45	846	40	56
703	27	67	775	22	52	847	41	57
704	29	68	776	18	55	848	18	73
705	34	62	777	26	54	849	15	55
706	35	61	778	39	62	850	18	50
707	28	78	779	37	71	851	17	52
708	11	71	780	32	58	852	20	49
709	4	58	781	24	48	853	16	62
710	5	58	782	14	59	854	4	67
711	10	56	783	7	59	855	2	64
712	20	63	784	7	55	856	7	54
713	13	76	785	18	49	857	10	50
714	11	65	786	40	62	858	9	57
715	9	60	787	44	73	859	5	62
716	7	55	788	41	68	860	12	51
717	8	53	789	35	48	861	14	65
718	10	60	790	29	54	862	9	64
719	28	53	791	22	69	863	31	50
720	12	73	792	46	53	864	30	78
721	4	64	793	59	71	865	21	65
722	4	61	794	69	68	866	14	51
723	4	61	795	75	47	867	10	55
724	10	56	796	62	32	868	6	59
725	8	61	797	48	35	869	7	59
726	20	56	798	27	59	870	19	54
727	32	62	799	13	58	871	23	61
728	33	66	800	14	54	872	24	62
729	34	73	801	21	53	873	34	61
730	31	61	802	23	56	874	51	67
731	33	55	803	23	57	875	60	66
732	33	60	804	23	65	876	58	55
733	31	59	805	13	65	877	60	52
734	29	58	806	9	64	878	64	55
735	31	53	807	27	56	879	68	51
736	33	51	808	26	78	880	63	54
737	33	48	809	40	61	881	64	50
738	27	44	810	35	76	882	68	58
739	21	52	811	28	66	883	73	47
740	13	57	812	23	57	884	63	40
741	12	56	813	16	50	885	50	38
742	10	64	814	11	53	886	29	61
743	22	47	815	9	57	887	14	61
744	15	74	816	9	62	888	14	53
745	8	66	817	27	57	889	42	6
746	34	47	818	42	69	890	58	6
747	18	71	819	47	75	891	58	6
748	9	57	820	53	67	892	77	39
749	11	55	821	61	62	893	93	56
750	12	57	822	63	53	894	93	44
751	10	61	823	60	54	895	93	37
752	16	53	824	56	44	896	93	31
753	12	75	825	49	39	897	93	25

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)
898	93	26	970	89	6	1042	93	17
899	93	27	971	68	6	1043	93	16
900	93	25	972	57	6	1044	93	16
901	93	21	973	66	32	1045	93	15
902	93	22	974	84	52	1046	93	16
903	93	24	975	93	46	1047	93	18
904	93	23	976	93	42	1048	93	37
905	93	27	977	93	36	1049	93	48
906	93	34	978	93	28	1050	93	38
907	93	32	979	93	23	1051	93	31
908	93	26	980	93	19	1052	93	26
909	93	31	981	93	16	1053	93	21
910	93	34	982	93	15	1054	93	18
911	93	31	983	93	16	1055	93	16
912	93	33	984	93	15	1056	93	17
913	93	36	985	93	14	1057	93	18
914	93	37	986	93	15	1058	93	19
915	93	34	987	93	16	1059	93	21
916	93	30	988	94	15	1060	93	20
917	93	32	989	93	32	1061	93	18
918	93	35	990	93	45	1062	93	17
919	93	35	991	93	43	1063	93	17
920	93	32	992	93	37	1064	93	18
921	93	28	993	93	29	1065	93	18
922	93	23	994	93	23	1066	93	18
923	94	18	995	93	20	1067	93	19
924	95	18	996	93	18	1068	93	18
925	96	17	997	93	16	1069	93	18
926	95	13	998	93	17	1070	93	20
927	96	10	999	93	16	1071	93	23
928	95	9	1000	93	15	1072	93	25
929	95	7	1001	93	15	1073	93	25
930	95	7	1002	93	15	1074	93	24
931	96	7	1003	93	14	1075	93	24
932	96	6	1004	93	15	1076	93	22
933	96	6	1005	93	15	1077	93	22
934	95	6	1006	93	14	1078	93	22
935	90	6	1007	93	13	1079	93	19
936	69	43	1008	93	14	1080	93	16
937	76	62	1009	93	14	1081	95	17
938	93	47	1010	93	15	1082	95	37
939	93	39	1011	93	16	1083	93	43
940	93	35	1012	93	17	1084	93	32
941	93	34	1013	93	20	1085	93	27
942	93	36	1014	93	22	1086	93	26
943	93	39	1015	93	20	1087	93	24
944	93	34	1016	93	19	1088	93	22
945	93	26	1017	93	20	1089	93	22
946	93	23	1018	93	19	1090	93	22
947	93	24	1019	93	19	1091	93	23
948	93	24	1020	93	20	1092	93	22
949	93	22	1021	93	32	1093	93	22
950	93	19	1022	93	37	1094	93	23
951	93	17	1023	93	28	1095	93	23
952	93	19	1024	93	26	1096	93	23
953	93	22	1025	93	24	1097	93	22
954	93	24	1026	93	22	1098	93	23
955	93	23	1027	93	22	1099	93	23
956	93	20	1028	93	21	1100	93	23
957	93	20	1029	93	20	1101	93	25
958	94	19	1030	93	20	1102	93	27
959	95	19	1031	93	20	1103	93	26
960	95	17	1032	93	20	1104	93	25
961	96	13	1033	93	19	1105	93	27
962	95	10	1034	93	18	1106	93	27
963	96	9	1035	93	20	1107	93	27
964	95	7	1036	93	20	1108	93	24
965	95	7	1037	93	20	1109	93	20
966	95	7	1038	93	20	1110	93	18
967	95	6	1039	93	19	1111	93	17
968	96	6	1040	93	18	1112	93	17
969	96	6	1041	93	18	1113	93	18

Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	Time(s)	Normalized speed (in percent)	Normalized torque (in percent)	
1114	93	18	1186	93	54	1051.210 May I get preliminary approval before I complete my application?
1115	93	18	1187	93	38	1051.215 What happens after I complete my application?
1116	93	19	1188	93	30	1051.220 How do I amend the maintenance instructions in my application?
1117	93	22	1189	93	24	1051.225 How do I amend my application to include new or modified vehicles?
1118	93	22	1190	93	20	1051.230 How do I select engine families?
1119	93	19	1191	95	20	1051.235 How does testing fit with my application for a certificate of conformity?
1120	93	17	1192	96	18	1051.240 How do I determine if my engine family complies with emission standards?
1121	93	17	1193	96	15	1051.245 What records must I keep and make available to EPA?
1122	93	18	1194	96	11	1051.250 When may EPA deny, revoke, or void my certificate of conformity?
1123	93	18	1195	95	9	
1124	93	19	1196	95	8	
1125	93	19	1197	96	7	
1126	93	20	1198	94	33	
1127	93	19	1199	93	46	
1128	93	20	1200	93	37	
1129	93	25	1201	16	8	
1130	93	30	1202	0	0	Subpart D—Testing Production-line Engines
1131	93	31	1203	0	0	1051.301 When must I test my production-line vehicles or engines?
1132	93	26	1204	0	0	1051.305 How must I prepare and test my production-line vehicles or engines?
1133	93	21	1205	0	0	1051.310 How must I select vehicles or engines for production-line testing?
1134	93	18	1206	0	0	1051.315 How do I know when my engine family does not comply?
1135	93	20	1207	0	0	1051.320 What happens if one of my production-line vehicles or engines fails to meet emission standards?
1136	93	25	1208	0	0	1051.325 What happens if an engine family does not comply?
1137	93	24	1209	0	0	1051.330 May I sell vehicles from an engine family with a suspended certificate of conformity?
1138	93	21				1051.335 How do I ask EPA to reinstate my suspended certificate?
1139	93	21				1051.340 When may EPA revoke my certificate under this subpart and how may I sell these vehicles again?
1140	93	22				1051.345 What production-line testing records must I send to EPA?
1141	93	22				1051.350 What records must I keep?
1142	93	28				Subpart E—Testing In-use Engines
1143	93	29				1051.401 What provisions apply for in-use testing of my vehicles or engines?
1144	93	23				Subpart F—Test Procedures
1145	93	21				1051.501 What procedures must I use to test my vehicles or engines?
1146	93	18				1051.505 What special provisions apply for testing snowmobiles?
1147	93	16				1051.520 How do I perform durability testing?
1148	93	16				Subpart G—Compliance Provisions
1149	93	16				1051.601 What compliance provisions apply to these vehicles?
1150	93	17				1051.605 What are the provisions for exempting vehicles from the requirements of this part if they use engines you have certified under the motor-vehicle program or the Large Spark-ignition (SI) program?
1151	93	17				1051.610 What are the provisions for producing recreational vehicles with engines already certified under the motor-vehicle program or the Large SI program?
1152	93	17				1051.615 What are the special provisions for certifying small recreational engines?
1153	93	17				1051.620 When may a manufacturer introduce into commerce an uncertified
1154	93	23				
1155	93	26				
1156	93	22				
1157	93	18				
1158	93	16				
1159	93	16				
1160	93	17				
1161	93	19				
1162	93	18				
1163	93	16				
1164	93	19				
1165	93	22				
1166	93	25				
1167	93	29				
1168	93	27				
1169	93	22				
1170	93	18				
1171	93	16				
1172	93	19				
1173	93	19				
1174	93	17				
1175	93	17				
1176	93	17				
1177	93	16				
1178	93	16				
1179	93	15				
1180	93	16				
1181	93	15				
1182	93	17				
1183	93	21				
1184	93	30				
1185	93	53				

PART 1051—CONTROL OF EMISSIONS FROM RECREATIONAL ENGINES AND VEHICLES

Subpart A—Determining How To Follow This Part

Sec.

- 1051.1 Does this part apply to me?
 1051.5 May I exclude any vehicles from this part's requirements?
 1051.10 What main steps must I take to comply with this part?
 1051.15 Do any other regulation parts affect me?
 1051.20 May I certify a recreational engine instead of the vehicle?

Subpart B—Emission Standards and Related Requirements

- 1051.100 What exhaust emission standards must my vehicles meet?
 1051.101 What are the exhaust emission standards for snowmobiles?
 1051.102 What are the exhaust emission standards for off-highway motorcycles?
 1051.103 What are the exhaust emission standards for all-terrain vehicles (ATVs)?
 1051.115 What other requirements must my vehicles meet?
 1051.120 What warranty requirements apply to me?
 1051.125 What maintenance instructions must I give to buyers?
 1051.130 What installation instructions must I give to vehicle manufacturers?
 1051.135 How must I label and identify the vehicles and engines I produce?
 1051.145 What provisions apply only for a limited time?

Subpart C—Certifying Engine Families

- 1051.201 What are the general requirements for submitting a certification application?
 1051.205 How must I prepare my application?

recreational vehicle to be used for competition?

1051.625 What special provisions apply to unique snowmobile designs?

Subpart H—Averaging, Banking, and Trading for Certification

1051.701 General provisions.

1051.705 How do I average emission levels?

1051.710 How do I generate and bank emission credits?

1051.715 How do I trade emission credits?

1051.720 How do I calculate my average emission level or emission credits?

1051.725 What information must I retain?

1051.730 What information must I report?

Subpart I—Definitions and Other Reference Information

1051.801 What definitions apply to this part?

1051.805 What symbols, acronyms, and abbreviations does this part use?

1051.810 What materials does this part reference?

1051.815 How should I request EPA to keep my information confidential?

1051.820 How do I request a public hearing?

Authority: 42 U.S.C. 7401–7671(q).

Subpart A—Determining How To Follow This Part

§ 1051.1 Does this part apply to me?

(a) This part applies to you if you manufacture or import any of the following recreational vehicles or engines used in them, unless we exclude them under § 1051.5 or exempt them under § 1051.620:

- (1) Snowmobiles.
- (2) Off-highway motorcycles.
- (3) All-terrain vehicles (ATVs).

(b) Note in subpart G of this part that 40 CFR part 1068 applies to everyone, including anyone who manufactures, installs, owns, operates, or rebuilds any of the vehicles or engines this part covers.

(c) You need not follow this part for vehicles you produce before the 2006 model year, unless you certify voluntarily. See § 1051.101, § 1051.145, and the definition of model year in § 1051.801 for more information about the timing of new requirements.

(d) See §§ 1051.801 and 1051.805 for definitions and acronyms that apply to this part.

§ 1051.5 May I exclude any vehicles from this part's requirements?

(a) You may exclude vehicles with compression-ignition engines. See 40 CFR part 89 for regulations that cover these engines.

(b) See subpart G of this part and 40 CFR part 1068, subpart C, for exemptions of specific engines.

(c) We may require you to label an engine or vehicle (or both) if this section

excludes it and other requirements in this chapter do not apply.

(d) Send the Designated Officer a written request with supporting documentation if you want us to determine whether this part covers or excludes certain vehicles. Excluding engines from this part's requirements does not affect other requirements that may apply to them.

§ 1051.10 What main steps must I take to comply with this part?

(a) You must get a certificate of conformity from us for each engine family before do any of the following things with a new vehicle or new engine covered by this part: sell, offer for sale, introduce into commerce, distribute or deliver for introduction into commerce, or import it into the United States. "New" vehicles or engines may include some already placed in service (see the definition of "new" in § 1051.801). You must get a new certificate of conformity for each new model year.

(b) To get a certificate of conformity and comply with its terms, you must do four things:

- (1) Meet the emission standards and other requirements in subpart B of this part.
- (2) Apply for certification (see subpart C of this part).
- (3) Do routine emission testing on production vehicles or engines (see subpart D of this part).
- (4) Follow our instructions throughout this part.

(c) Subpart F of this part and 40 CFR parts 86 and 1065 describe how you must test your vehicles or engines. Subpart F of this part describes when you may test the engine alone instead of the entire vehicle.

(d) Subpart G of this part and 40 CFR part 1068 describe requirements and prohibitions that apply to manufacturers, owners, operators, rebuilders, and all others. They also describe exemptions available for special circumstances.

§ 1051.15 Do any other regulation parts affect me?

(a) Parts 86 and 1065 of this chapter describe procedures and equipment specifications for testing vehicles and engines. Subpart F of this part describes how to apply part 86 or 1065 of this chapter to show you meet the emission standards in this part.

(b) Part 1068 of this chapter describes general provisions, including these seven areas:

- (1) Prohibited acts and penalties for manufacturers and others.
- (2) Rebuilding and other aftermarket changes.

(3) Exemptions for certain vehicles and engines.

(4) Importing vehicles and engines.

(5) Selective enforcement audits of your production.

(6) Defect reporting and recall.

(7) Procedures for public hearings.

(c) Other parts of this chapter affect you if referenced in this part.

§ 1051.20 May I certify a recreational engine instead of the vehicle?

(a) You may certify engines sold separately from vehicles in either of two cases:

(1) If you manufacture recreational engines but not recreational vehicles, you may ask to certify the engine alone. In your request, explain why you cannot certify the entire vehicle.

(2) If you manufacture complete recreational vehicles containing engines you also sell separately, you may ask to certify all these engines in a single engine family or in separate engine families.

(b) If you certify an engine under this section, you must use the test procedures in subpart F of this part. If the test procedures require chassis testing, use good engineering judgment to install the engine in an appropriate vehicle for measuring emissions.

(c) If we allow you to certify recreational engines, we may tell you how to ensure the engine will comply with emission standards after it is in a vehicle. If we do not tell you what to do, use good engineering judgment to ensure that the engine will meet standards after installation. You must comply with § 1051.130.

(d) Do not use the provisions of this section to circumvent or reduce the stringency of this part's standards or other requirements.

Subpart B—Emission Standards and Related Requirements

§ 1051.100 What exhaust emission standards must my vehicles meet?

Your vehicles must meet the following exhaust emission standards:

(a) For snowmobiles, see § 1051.101.

(b) For off-highway motorcycles, see § 1051.102.

(c) For all-terrain vehicles, see § 1051.103.

(d) Apply this subpart to all testing, including production-line and in-use testing, as described in subparts D and E of this part.

§ 1051.101 What are the exhaust emission standards for snowmobiles?

(a) Apply the exhaust emission standards in this section by model year while measuring emissions with snowmobile test procedures in subpart F of this part.

(b) Follow Table 1 of this section for exhaust emission standards. You may use the averaging, banking, and trading

provisions of subpart H of this part to show compliance with these standards. Table 1 also shows the maximum value

you may specify for a Family Emission Limit, as follows:

TABLE 1 OF § 1051.101.—EXHAUST EMISSION STANDARDS FOR SNOWMOBILES (g/kW-hr)

Phase—Model year	Emission standards		Maximum allowable family emission limits	
	HC	CO	HC	CO
Phase 1—2007–2009	100	275	150	400
Phase 2—2010 and later	75	200	150	400

(c) You may also follow the voluntary standards in Table 2 of this section while measuring emissions with the test procedures in subpart F of this part. If you certify snowmobiles under this paragraph (c), you must meet the emission standards and all testing and reporting requirements. Table 2 follows:

TABLE 2 OF § 1051.101.—VOLUNTARY EXHAUST EMISSION STANDARDS FOR SNOWMOBILES (g/kW-hr)

Model year	Emission standards	
	HC	CO
2002–2009	75	200
2002 and later ..	45	120

(d) Apply the exhaust emission standards in this section for snowmobiles using all fuels. You must

meet the numerical emission standards for hydrocarbons in this section based on the following types of hydrocarbon emissions for snowmobiles powered by the following fuels:

- (1) Gasoline- and LPG-fueled snowmobiles: THC emissions.
- (2) Natural gas-fueled snowmobiles: NMHC emissions.
- (3) Alcohol-fueled snowmobiles: THCE emissions.

(e) You must show in your certification application that your snowmobiles meet emission standards over their full useful life. The minimum useful life is 300 hours of operation or five years, whichever comes first. Specify a longer useful life under either of two conditions:

- (1) If you design, advertise, or market your snowmobile to operate longer than the minimum useful life (your recommended time until rebuild may indicate a longer design life).

(2) If your basic mechanical warranty is longer than the minimum useful life.

(f) Refer to § 1051.240 to apply deterioration factors.

§ 1051.102 What are the exhaust emission standards for off-highway motorcycles?

(a) Apply the exhaust emission standards in this section by model year while measuring emissions with off-highway motorcycle test procedures in subpart F of this part.

(b) Follow Table 1 of this section for exhaust emission standards. You may use the averaging, banking, and trading provisions of subpart H of this part to show compliance with these HC+NO_x standards. The phase-in percentages in the following table specify the percentage of your production that must comply with the emission standards for those model years:

TABLE 1 OF § 1051.102.—EXHAUST EMISSION STANDARDS FOR OFF-HIGHWAY MOTORCYCLES (g/km)

Model year—phase-in	Emission standards		Maximum allowable family emission limits
	HC+NO _x	CO	
			HC+NO _x
2006—50%	2.0	25.0	20.0
2007 and later—100%	2.0	25.0	20.0

(c) You may also follow the voluntary standards in Table 2 of this section while measuring emissions with the test procedures in subpart F of this part. If you certify off-highway motorcycles under this paragraph (c), you must meet the emission standards and all testing and reporting requirements. Table 2 follows:

TABLE 2 OF § 1051.102.—VOLUNTARY EXHAUST EMISSION STANDARDS FOR OFF-HIGHWAY MOTORCYCLES (g/km)

Model year	Emission standards	
	HC+NO _x	CO
2002 and later ..	0.8	15

(d) Apply the exhaust emission standards in this section for snowmobiles using all fuels. You must meet the numerical emission standards for hydrocarbons in this section based

on the following types of hydrocarbon emissions for snowmobiles powered by the following fuels:

- (1) Gasoline- and LPG-fueled snowmobiles: THC emissions.
- (2) Natural gas-fueled snowmobiles: NMHC emissions.
- (3) Alcohol-fueled snowmobiles: THCE emissions.

(e) You must show in your certification application that your snowmobiles meet emission standards over their full useful life. The minimum useful life is 300 hours of operation or five years, whichever comes first.

Specify a longer useful life under either of two conditions:

(1) If you design, advertise, or market your snowmobile to operate longer than the minimum useful life (your recommended time until rebuild may indicate a longer design life).

(2) If your basic mechanical warranty is longer than the minimum useful life.

(f) Refer to § 1051.240 to apply deterioration factors.

§ 1051.102 What are the exhaust emission standards for allterrain vehicles (ATVs)?

(a) Apply the exhaust emission standards in this section by model year while measuring emissions with ATV test procedures in subpart F of this part.

(b) Follow Table 1 of this section for exhaust emission standards. You may use the averaging, banking, and trading provisions of subpart H of this part to show compliance with these HC+NO_x standards. Table 1 also shows the

maximum value you may specify for a Family Emission Limit.

(1) The phase-in percentages in the table specify the percentage of your production that must comply with the emission standards for those model years.

(2) In the 2009 model year, you must produce the specified minimum percentage of Phase 2 vehicles, while certifying any remaining vehicles to Phase 1 standards.

(3) Table 1 follows:

TABLE 1 OF § 1051.103.—EXHAUST EMISSION STANDARDS FOR ATVs (g/km)

Phase	Model year	Phase-in (percent)	Emission standards		Maximum allowable family emission limits
			HC+NO _x	CO	HC+NO _x
Phase 1	2006	50	2.0	25.0	20.0
	2007 and 2008	100	2.0	25.0	20.0
	2009	50	2.0	25.0	20.0
Phase 2	2009	50	1.0	25.0	2.0
	2010 and later	100	1.0	25.0	2.0

(c) You may also follow the voluntary standards in Table 2 of this section while measuring emissions with the test procedures in subpart F of this part. If you certify ATVs under this paragraph (c), you must meet the emission standards and all testing and reporting requirements. Table 2 follows:

TABLE 2 OF § 1051.103.—VOLUNTARY EXHAUST EMISSION STANDARDS FOR ATVs (g/km)

Model year	Emission standards	
	HC+NO _x	CO
2002 and later	0.8	12

(d) Apply the exhaust emission standards in this section for ATVs using all fuels. You must meet the numerical emission standards for hydrocarbons in this section based on the following types of hydrocarbon emissions for ATVs powered by the following fuels:

(1) Gasoline- and LPG-fueled ATVs: THC emissions.

(2) Natural gas-fueled ATVs: NMHC emissions.

(3) Alcohol-fueled ATVs: THCE emissions.

(e) You must show in your certification application that your ATVs meet emission standards over their full useful life. The minimum useful life is 30,000 km or five years, whichever

comes first. Specify a longer useful life under either of two conditions:

(1) If you design, advertise, or market your ATV to operate longer than the minimum useful life (your recommended time until rebuild may indicate a longer design life).

(2) If your basic mechanical warranty is longer than the minimum useful life.

(f) Refer to § 1051.240 to apply deterioration factors.

§ 1051.115 What other requirements must my vehicles meet?

Your vehicles must meet the following requirements:

(a) *Closed crankcase.* Design and produce your vehicles so they release no crankcase emissions into the atmosphere.

(b) *Emission sampling capability.* Produce all your vehicles to allow sampling of exhaust emissions in the field. This sampling requires either exhaust ports downstream of any aftertreatment devices or the ability to extend the exhaust pipe by 20 cm. This is necessary to minimize any diluting effect from ambient air at the end of the exhaust pipe.

(c) *Adjustable parameters.* If your vehicles have adjustable parameters, make sure they meet all the requirements of this part for any adjustment in the physically available range.

(1) We do not consider an operating parameter adjustable if you permanently seal it or if ordinary tools cannot readily access it.

(2) We may require you to adjust the engine to any specification within the adjustable range during certification testing, production-line testing, selective enforcement auditing, or in-use testing.

(d) *Other adjustments.* This provision applies if an experienced mechanic can change your engine's air-fuel ratio in less than one hour with a few parts whose total cost is under \$50 (in 2001 dollars). An example is carburetor jets. In this case, your vehicle must meet all the requirements of this part for any air/fuel ratio within the adjustable range described in paragraph (d)(1) of this section.

(1) In your application for certification, specify the adjustable range of air/fuel ratios you expect to occur in use. You may specify it in terms of engine parts (such as the carburetor jet's size). This adjustable range must include all air/fuel ratios between the lean limit and the rich limit, unless you can show that some air/fuel ratios will not occur in use.

(i) The lean limit is the air/fuel ratio that produces the highest engine power output (averaged over the test cycle).

(ii) The rich limit is the richest of the following air/fuel ratios:

(A) The air/fuel ratio when you produce it.

(B) The air/fuel ratio when you do durability testing.

(C) The richest air-fuel ratio that you recommend to your customers.

(2) We may require you to adjust the engine to any specification within the adjustable range during certification testing, production-line testing, selective enforcement auditing, or in-use testing.

(e) *Prohibited controls.* You may not design engines with an emission-control system that emits any noxious or toxic substance that the engine would not emit during operation in the absence of such a system, except as specifically permitted by regulation.

(f) *Defeat devices.* You may not equip your vehicles with a defeat device. A defeat device is an auxiliary emission-control device or other control feature that reduces the effectiveness of emission controls under conditions you may reasonably expect the vehicle to encounter during normal operation and use. This does not apply to auxiliary emission-control devices you identify in your certification application if any of the following is true:

(1) The conditions of concern were substantially included in your prescribed duty cycles.

(2) You show your design is necessary to prevent catastrophic vehicle damage or accidents.

(3) The reduced effectiveness applies only to starting the engine.

(g) *Noise standards.* See 40 CFR chapter I, subchapter G, to determine if your vehicle must meet noise emission standards.

§ 1051.120 What warranty requirements apply to me?

(a) You must warrant to the ultimate buyer that the new vehicle meets two conditions:

(1) You have designed, built, and equipped it to meet the requirements of this part.

(2) It is free from defects in materials and workmanship that may keep it from meeting these requirements.

(b) Your emission-related warranty must be valid for at least 50 percent of the vehicle's useful life in kilometers (or hours) of operation or at least three years, whichever comes first. You may offer a warranty more generous than we require. This warranty may not be shorter than any published or negotiated warranty you offer for the vehicle or any of its components. If a vehicle has no tamper-proof odometer (or hour meter), we base warranty periods in this paragraph (b) only on the vehicle's age (in years).

(c) Your emission-related warranty must cover components whose failure would increase a vehicle's emissions, including electronic controls, fuel injection, exhaust-gas recirculation, aftertreatment, or any other system you develop to control emissions. In general, we consider replacing or repairing other components to be the owner's responsibility.

(d) You may exclude from your warranty a component named in paragraph (c) of this section, if it meets two conditions:

(1) It was in general use on similar vehicles before January 1, 2000.

(2) Its failure would clearly degrade the vehicle's performance enough that the operator would need to repair or replace it.

(e) You may limit your emission-related warranty's validity to properly maintained vehicles, as described in § 1068.115 of this chapter.

(f) If you make an aftermarket part, you may—but do not have to—certify that using the part will still allow vehicles to meet emission standards, as described in § 85.2114 of this chapter.

§ 1051.125 What maintenance instructions must I give to buyers?

Give the ultimate buyer of each new vehicle written instructions for properly maintaining and using the vehicle, including the emission-control system. The maintenance instructions also apply to service accumulation on your test vehicles or engines, as described in 40 CFR part 1065, subpart E.

(a) *Critical emission-related maintenance.* You may schedule critical maintenance on particular devices if you meet the following conditions:

(1) You may ask us to approve maintenance on air-injection, fuel-system, or ignition components, aftertreatment devices, exhaust gas recirculation systems, crankcase ventilation valves, or oxygen sensors only if it meets two criteria:

(i) Operators are reasonably likely to do the maintenance you call for.

(ii) Vehicles need the maintenance to meet emission standards.

(2) We will accept scheduled maintenance as reasonably likely to occur in use if you satisfy any of four conditions:

(i) You present data showing that, if a lack of maintenance increases emissions, it also unacceptably degrades the vehicle's performance.

(ii) You present survey data showing that 80 percent of vehicles in the field get the maintenance you specify at the recommended intervals.

(iii) You provide the maintenance free of charge and clearly say so in

maintenance instructions for the customer.

(iv) You otherwise show us that the maintenance is reasonably likely to be done at the recommended intervals.

(b) *Minimum maintenance intervals.* You may not schedule emission-related maintenance within the minimum useful life period for aftertreatment devices, fuel injectors, sensors, electronic control units, and turbochargers.

(c) *Noncritical emission-related maintenance.* For engine parts not listed in paragraph (a) or (b) of this section, you may recommend any additional amount of inspection or maintenance. But you must state clearly that these steps are not necessary to keep the emission-related warranty valid. Also, do not take these inspection or maintenance steps during service accumulation on your test vehicles or engines.

(d) *Source of parts and repairs.* Print clearly on the first page of your written maintenance instructions that any repair shop or person may maintain, replace, or repair emission-control devices and systems. Make sure your instructions require no component or service identified by brand, trade, or corporate name. Also, do not directly or indirectly distinguish between service by companies with which you have a commercial relationship and service by independent repair shops or the owner. You may disregard the requirements in this paragraph (d) if you do one of two things:

(1) Provide a component or service without charge under the purchase agreement.

(2) Get us to waive this prohibition in the public's interest by convincing us the vehicle will work properly only with the identified component or service.

§ 1051.130 What installation instructions must I give to vehicle manufacturers?

(a) If you sell an engine for someone else to install in a recreational vehicle, give the buyer of the vehicle written instructions for installing it consistent with the requirements of this part. Make sure these instructions have the following information:

(1) Include the heading: "Emission-related installation instructions."

(2) State: "Failing to follow these instructions when installing a certified engine in a recreational vehicle violates federal law (40 CFR 1068.105(b)), subject to fines or other penalties as described in the Clean Air Act."

(3) Describe any other instructions needed to install an exhaust

aftertreatment device consistent with your application for certification.

(4) Describe any limits on the range of applications needed to ensure that the engine operates consistently with your application for certification. For example, if your engines are certified only to the snowmobile standards, tell vehicle manufacturers not to install the engines in other vehicles.

(5) Describe any other instructions to make sure the installed engine will operate according to any design specifications you describe in your application for certification.

(6) State: "If you obscure the engine's emission label, you must attach a duplicate label to your vehicle, as described in 40 CFR 1068.105."

(b) You do not need installation instructions for engines you install in your own vehicle.

§ 1051.135 How must I label and identify the vehicles and engines I produce?

(a) Assign each production engine a unique identification number and permanently and legibly affix or engrave it on the engine.

(b) At the time of manufacture, add a permanent label identifying each engine. To meet labeling requirements, do four things:

(1) Attach the label in one piece so it is not removable without being destroyed or defaced.

(2) Design and produce it to be durable and readable for the engine's entire life.

(3) Secure it to a part of the engine needed for normal operation and not normally requiring replacement.

(4) Write it in block letters in English.

(c) On your engine label, do 13 things:

(1) Include the heading "EMISSION CONTROL INFORMATION."

(2) Include your full corporate name and trademark.

(3) State: "THIS VEHICLE IS CERTIFIED TO OPERATE ON [specify operating fuel or fuels]."

(4) Identify the emission-control system; your identifiers must use names and abbreviations consistent with SAE J1930, which we incorporate by reference (see § 1051.810).

(5) List all requirements for fuel and lubricants.

(6) State the date of manufacture [DAY (optional), MONTH, and YEAR]; if you stamp it on the engine and print it in the owner's manual, you may omit this information from the label.

(7) State: "THIS VEHICLE MEETS U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS FOR [MODEL YEAR] [SNOWMOBILES or OFF-ROAD MOTORCYCLES or ATVS]."

(8) Include EPA's standardized designation for the engine family.

(9) State the engine's displacement (in liters) and rated power.

(10) State the engine's useful life (see § 1051.100(h)).

(11) List specifications and adjustments for engine tuneups; show the proper position for the transmission during tuneup and state which accessories should be operating.

(12) Describe other information on proper maintenance and use.

(13) Identify the emission standards or Family Emission Limits to which you have certified the engine.

(d) Some of your engines may need more information on the label. If you produce an engine or vehicle that we exempt from the requirements of this part, see 40 CFR part 1068, subparts C and D, for more label information.

(e) Some engines may not have enough space for a label with all the required information. In this case, you may omit the information required in paragraphs (c)(3), (c)(4), (c)(5), and (c)(12) of this section if you print it in the owner's manual instead.

(f) If you are unable to meet these labeling requirements, you may ask us to modify them consistent with the intent of this section.

(g) If you obscure the engine label while installing the engine in the vehicle, you must place a duplicate label on the vehicle. If someone else installs the engine in a vehicle, give them duplicate labels if they ask for them (see 40 CFR 1068.105).

§ 1051.145 What provisions apply only for a limited time?

Apply the following provisions instead of others in this part for the periods and circumstances specified in this section.

(a) *Provisions for small-volume manufacturers.* Special provisions apply to you if you are a small-volume manufacturer subject to the requirements of this part.

(1) You may delay complying with otherwise applicable emission standards (and other requirements) for two model years.

(2) If you are a small-volume manufacturer of snowmobiles, at least

50 percent of the models you produce must meet emission standards in the first two years they apply, as described in paragraph (a)(1) of this section.

(3) Your vehicles for model years before 2011 may be exempt from the requirements and prohibitions of this part if you meet four criteria:

(i) Produce your vehicles by installing engines covered by a valid certificate of conformity under 40 CFR part 90 that shows the engines meet standards for Class II engines for each engine's model year.

(ii) Do not change the engine in a way that we could reasonably expect to increase its exhaust emissions.

(iii) Make sure the engine meets all applicable requirements from 40 CFR part 90. This applies to engine manufacturers, vehicle manufacturers who use these engines, and all other persons as if these engines were not used in recreational vehicles.

(iv) Make sure that fewer than 50 percent of the engine model's total sales, from all companies, are used in recreational vehicles regulated under this part.

(b) *Optional emission standards for Phase 1 ATVs.* To meet Phase 1 ATV standards, you may apply the exhaust emission standards by model year in paragraph (b)(1) of this section while measuring emissions using the engine-based test procedures in 40 CFR part 1065 instead of the chassis-based test procedures in 40 CFR part 86.

(1) Follow Table 1 of this section for exhaust emission standards, while meeting all the other requirements of § 1051.103. You may use emission credits to show compliance with these standards (see subpart H of this part). You may not exchange emission credits with engine families meeting the standards in § 1051.103. You may also not exchange credits between engine families certified above 225 cc and engine families certified below 225 cc.

(i) The phase-in percentages in the table specify the percentage of your production that must comply with the emission standards for those model years.

(ii) In the 2009 model year, you may produce fewer vehicles meeting Phase 1 standards if they are instead certified to Phase 2 standards.

(iii) Table 1 follows:

TABLE 1 OF § 1051.145.—OPTIONAL EXHAUST EMISSION STANDARDS FOR PHASE 1 ATVs (g/kW-hr)

Engine displacement	Model year	Phase-in (percent)	Emission standards		Maximum allowable family emission limits
			HC+NO _x	CO	HC+NO _x
<225 cc	2006	50	16.1	400	32.2
	2007 and 2008	100	16.1	400	32.2
	2009	50	16.1	400	32.2
≥225 cc	2006	50	13.4	400	26.8
	2007 and 2008	100	13.4	400	26.8
	2009	50	13.4	400	26.8

(2) Measure emissions by testing the engine on a dynamometer with the steady-state duty cycle described in Table 2 of this section.

(i) During idle mode, hold the speed within your specifications, keep the

throttle fully closed, and keep engine torque under 5 percent of the peak torque value at maximum test speed.

(ii) For the full-load operating mode, operate the engine at its maximum fueling rate.

(iii) See part 1065 of this chapter for detailed specifications of tolerances and calculations.

(iv) Table 2 follows:

TABLE 2 OF § 1051.145.—6-MODE DUTY CYCLE FOR RECREATIONAL ENGINES

Mode No.	Engine speed	Torque	Minimum time in mode (minutes)	Weighting factors
1	85	100	5.0	0.09
2	85	75	5.0	0.20
3	85	50	5.0	0.29
4	85	25	5.0	0.30
5	85	10	5.0	0.07
6	Idle	0	5.0	0.05

(c) For model years before 2011, if you are a small-volume manufacturer, your vehicles may be exempt from the requirements and prohibitions of this part if you meet all the following criteria:

(1) You must produce them by installing engines covered by a valid certificate of conformity under 40 CFR part 90 showing that the engines meet the standards for Class II engines for each engine's model year.

(2) You must not make any changes to the engine that we could reasonably expect to increase its exhaust emissions.

(3) You must make sure the engine meets all the requirements from 40 CFR part 90 that apply. The requirements and restrictions of 40 CFR part 90 apply to anyone manufacturing these engines, anyone manufacturing vehicles that use these engines, and all other persons in

the same manner as if these engines were not used in recreational vehicles.

(4) You must make sure that fewer than 50 percent of the engine model's total sales, from all companies, are used in recreational vehicles.

Subpart C—Certifying Engine Families

§ 1051.201 What are the general requirements for submitting a certification application?

(a) Send us an application for a certificate of conformity for each engine family. Each application is valid for only one model year.

(b) The application must not include false or incomplete statements or information (see § 1051.250).

(c) We may choose to ask you to send us less information than we specify in this subpart, but this would not change your recordkeeping requirements.

(d) Use good engineering judgment for all decisions related to your application (see § 1068.5 of this chapter).

(e) An authorized representative of your company must approve and sign the application.

§ 1051.205 How must I prepare my application?

In your application, you must do all the following things:

(a) Describe the engine family's specifications and other basic parameters of the vehicle design. List the types of fuel you intend to use to certify the engine family (for example, gasoline, liquefied petroleum gas, methanol, or natural gas).

(b) Explain how the emission-control system operates. Describe in detail all the system's components, auxiliary emission-control devices, and all fuel-system components you will install on

any production or test vehicle or engine. Explain why any auxiliary emission-control devices are not defeat devices (see § 1051.115(f)). Do not include detailed calibrations for components unless we ask for them.

(c) Describe the vehicles or engines you selected for testing and the reasons for selecting them.

(d) Describe any special or alternate test procedures you used (see § 1051.501).

(e) Identify the duty cycle and the number of engine operating hours used to stabilize emission levels. Describe any scheduled maintenance you did.

(f) List the specifications of the test fuel to show that it falls within the required ranges we specify in 40 CFR part 1065, subpart C.

(g) Identify the engine family's useful life.

(h) Propose maintenance and use instructions for the ultimate buyer of each new vehicle (see § 1051.125).

(i) Propose emission-related installation instructions if you sell engines for someone else to install in a vehicle (see § 1051.130).

(j) Propose an emission-control label.

(k) Present emission data for HC, NO_x (where applicable), and CO on a test vehicle or engine to show your vehicles meet the emission standards we specify in subpart B of this part. Show these figures before and after applying deterioration factors for each vehicle or engine. Include test data for each type of fuel on which you intend for vehicles in the engine family to operate (for example, gasoline, liquefied petroleum gas, methanol, or natural gas).

(l) Report all test results, including those from invalid tests or from any nonstandard tests (such as measurements based on exhaust concentrations in parts per million).

(m) Identify the engine family's deterioration factors and describe how you developed them. Present any emission test data you used for this.

(n) Describe all adjustable operating parameters and other adjustments (see § 1051.115(c) and (d)), including the following:

(1) The nominal or recommended setting and the associated production tolerances.

(2) The intended physically adjustable range.

(3) The limits or stops used to establish adjustable ranges.

(4) Production tolerances of the limits or stops used to establish each physically adjustable range.

(5) Where applicable, information showing that someone cannot readily modify the engines to operate outside the physically adjustable range.

(6) The air/fuel ratios specified in § 1051.115(d).

(o) State that you operated your test vehicles or engines according to the specified procedures and test parameters using the fuels described in the application to show you meet the requirements of this part.

(p) State unconditionally that all the vehicles (and/or engines) in the engine family comply with the requirements of this part, other referenced parts, and the Clean Air Act (42 U.S.C. 7401 *et seq.*)

(q) Include estimates of vehicle production.

(r) Add other information to help us evaluate your application if we ask for it.

§ 1051.210 May I get preliminary approval before I complete my application?

If you send us information before you finish the application, we will review it and make any appropriate determinations listed in § 1051.215(b) within 90 days of your request. If we need to ask you for further information, we will extend the 90-day period by the number of days we wait for your response.

§ 1051.215 What happens after I complete my application?

(a) If any of the information in your application changes after you submit it, amend it as described in § 1051.225.

(b) We may decide that we cannot approve your application unless you revise it.

(1) If you inappropriately use the provisions of § 1051.230(c) or (d) to define a broader or narrower engine family, we will require you to redefine your engine family.

(2) If we determine your selected useful life for the engine family is too short, we will require you to lengthen it (see § 1051.101(e), § 1051.102(e), or § 1051.103(e)).

(3) If we determine your deterioration factors are not appropriate, we will require you to revise them (see § 1051.240(c)).

(4) If your proposed label is inconsistent with § 1051.135, we will require you to change it (and tell you how, if possible).

(5) If you require or recommend maintenance and use instructions inconsistent with § 1051.125, we will require you to change them.

(6) If we find any other problem with your application, we will tell you how to correct it.

(c) If we determine your application is complete and shows you meet all the requirements, we will issue a certificate of conformity for your engine family for that model year. If we deny the

application, we will explain why in writing. You may then ask us to hold a hearing to reconsider our decision (see § 1051.820).

§ 1051.220 How do I amend the maintenance instructions in my application?

Send the Designated Officer a request to amend your application for certification for an engine family if you want to change the maintenance instructions in a way that could affect emissions. In your request, describe the proposed changes to the maintenance instructions. Unless we disapprove it, you may distribute the new maintenance instructions to your customers 30 days after we receive your request. We may also approve a shorter time or waive this requirement.

§ 1051.225 How do I amend my application to include new or modified vehicles?

(a) You must amend your application for certification before you take either of the following actions:

(1) Add a vehicle to a certificate of conformity.

(2) Make a design change for a certified engine family that may affect emissions or an emission-related part over the vehicle's lifetime.

(b) Send the Designated Officer a request to amend the application for certification for an engine family. In your request, do all of the following:

(1) Describe the vehicle model or configuration you are adding or changing.

(2) Include engineering evaluations or reasons why the original test vehicle or engine is or is not still appropriate.

(3) If the original test vehicle or engine for the engine family is not appropriate to show compliance for the new or modified vehicle, include new test data showing that the new or modified vehicle meets the requirements of this part.

(c) You may start producing the new or modified vehicle anytime after you send us your request.

(d) You must give us test data within 30 days if we ask for more testing, or stop producing the vehicle if you are not able to do this.

(e) If we determine that the certificate of conformity would not cover your new or modified vehicle, we will send you a written explanation of our decision. In this case, you may no longer produce these vehicles, though you may ask for a hearing for us to reconsider our decision (see § 1051.820).

§ 1051.230 How do I select engine families?

(a) Divide your product line into families of vehicles that you expect to

have similar emission characteristics. Your engine family is limited to a single model year.

(b) Group vehicles in the same engine family if they are identical in all of the following aspects:

- (1) The combustion cycle.
- (2) The cooling system (water-cooled vs. air-cooled).
- (3) The number and arrangement of cylinders.
- (4) The number, location, volume, and composition of catalytic converters.
- (5) Method of air aspiration.
- (6) Bore and stroke.
- (7) Configuration of the combustion chamber.

(8) Location of intake and exhaust valves or ports.

(c) In some cases you may subdivide a group of vehicles that is identical under paragraph (b) of this section into different engine families. To do so, you must show you expect emission characteristics to be different during the useful life or that any of the following engine characteristics are different:

- (1) Method of actuating intake and exhaust timing (poppet valve, reed valve, rotary valve, etc.).
- (2) Sizes of intake and exhaust valves or ports.
- (3) Type of fuel.
- (4) Configuration of the fuel system.
- (5) Exhaust system.

(d) In some cases, you may include different engines in the same engine family, even though they are not identical with respect to the things listed in paragraph (b) of this section.

(1) If you show that different engines have similar emission characteristics during the useful life, we may approve grouping them in the same engine family.

(2) If you are a small-volume manufacturer, you may group engines from any vehicles subject to the same emission standards into a single engine family. This does not change any of the requirements of this part for showing that an engine family meets emission standards.

(e) If you cannot define engine families by the method in this section, we will define them based on features related to emission characteristics.

§ 1051.235 How does testing fit with my application for a certificate of conformity?

This section describes how to test vehicles or engines in your effort to apply for a certificate of conformity.

(a) Test your vehicles or engines using the procedures and equipment specified in subpart F of this part.

(b) Select from each engine family a test vehicle or engine for each fuel type with a configuration you believe is most

likely to exceed the emission standards. Using good engineering judgment, consider the emission levels of all exhaust constituents over the full useful life of the vehicle.

(c) You may submit emission data for equivalent engine families from previous years instead of doing new tests, but only if the data shows that the test vehicle or engine would meet all the requirements for the latest vehicle or engine models. We may require you to do new emission testing if we believe the latest vehicle or engine models could be substantially different from the previously tested vehicle or engine.

(d) We may choose to measure emissions from any of your test vehicles or engines.

(1) If we do this, you must provide the test vehicle or engine at the location we select. We may decide to do the testing at your plant or any other facility. If we choose to do the testing at your plant, you must schedule it as soon as possible and make available the instruments and equipment we need.

(2) If we measure emissions on one of your test vehicles or engines, the results of that testing become the official data for the vehicle or engine. Unless we later invalidate this data, we may decide not to consider your data in determining if your engine family meets the emission standards.

(3) Before we test one of your vehicles or engines, we may set its adjustable parameters to any point within the physically adjustable ranges (see § 1051.115(c)) we may also adjust the air/fuel ratio within the adjustable range specified in § 1051.115(d).

(4) Calibrate the test vehicle or engine within the production tolerances shown on the engine label for anything we do not consider an adjustable parameter (see § 1051.205(m)).

(e) If you are a small-volume manufacturer, you may certify by design on the basis of existing emission data from comparable vehicles, in accordance with good engineering judgment. In those cases, you are not required to test your vehicles.

§ 1051.240 How do I determine if my engine family complies with emission standards?

(a) Your engine family complies with the numerical emission standards in subpart B of this part if all emission-data vehicles representing that family have test results showing emission levels at or below the standards.

(b) Your engine family does not comply if any emission-data vehicle representing that family has test results showing emission levels above the standards for any pollutant.

(c) To compare emission levels from the emission-data vehicle with the emission standards, apply deterioration factors (to three decimal places) to the measured emission levels. The deterioration factor is a number that shows the relationship between exhaust emissions at the end of useful life and at the low-hour test point. Section 1051.520 specifies how to test your vehicle to develop deterioration factors that estimate the change in emissions over your vehicle's full useful life. Small-volume manufacturers may use assigned deterioration factors established by EPA. Apply the deterioration factors as follows:

(1) For vehicles that use aftertreatment technology, such as catalytic converters, the deterioration factor is the ratio of exhaust emissions at the end of useful life to exhaust emissions at the low-hour test point. Adjust the official emission results for each tested vehicle at the selected test point by multiplying the measured emissions by the deterioration factor. If the factor is less than one, use one.

(2) For vehicles that do not use aftertreatment technology, the deterioration factor is the difference between exhaust emissions at the end of useful life and exhaust emissions at the low-hour test point. Adjust the official emission results for each tested vehicle at the selected test point by adding the factor to the measured emissions. If the factor is less than zero, use zero.

(d) After adjusting the emission levels for deterioration, round them to the same number of decimal places as the standard. Compare the rounded emission levels to the emission standard for each test vehicle.

§ 1051.245 What records must I keep and make available to EPA?

(a) Organize and maintain the following records to keep them readily available; we may review these records at any time:

(1) A copy of all applications and any summary information you sent us.

(2) Any of the information we specify in § 1051.205 that you did not include in your application.

(3) A detailed history of each emission-data vehicle. In each history, describe all of the following:

(i) The emission-data vehicle's construction, including its origin and buildup, steps you took to ensure that it represents production vehicles, any components you built specially for it, and all emission-related components.

(ii) How you accumulated vehicle or engine operating hours, including the dates and the number of hours accumulated.

(iii) All maintenance (including modifications, parts changes, and other service) and the dates and reasons for the maintenance.

(iv) All your emission tests, including documentation on routine and standard tests, as specified in part 1065 of this chapter, and the date and purpose of each test.

(v) All tests to diagnose engine or emission-control performance, giving the date and time of each and the reasons for the test.

(vi) Any other significant events.

(b) Keep data from routine emission tests (such as test cell temperatures and relative humidity readings) for one year after we issue the associated certificate of conformity. Keep all other information specified in paragraph (a) of this section for eight years after we issue your certificate.

(c) Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them.

(d) Send us copies of any maintenance instructions or explanations if we ask for them.

§ 1051.250 When may EPA deny, revoke, or void my certificate of conformity?

(a) We may deny your application for certification if your emission-data vehicles fail to comply with emission standards or other requirements. Our decision may be based on any information available to us. If we deny your application, we will explain why in writing.

(b) In addition, we may deny your application or revoke your certificate if you do any of the following:

(1) Refuse to comply with any testing or reporting requirements.

(2) Submit false or incomplete information (paragraph (d) of this section applies if this is fraudulent).

(3) Render inaccurate any test data.

(4) Deny us from completing authorized activities despite our presenting a warrant or court order (see § 1068.20 of this chapter).

(5) Produce vehicle or engines for importation into the United States at a location where local law prohibits us from carrying out authorized activities.

(c) We may void your certificate if you do not keep the records we require or do not give us information when we ask for it.

(d) We may void your certificate if we find that you committed fraud to get it. This means intentionally submitting false or incomplete information.

(e) If we deny your application or revoke or void your certificate, you may ask for a hearing (see § 1051.820). Any such hearing will be limited to substantial and factual issues.

Subpart D—Testing Production-Line Engines

§ 1051.301 When must I test my production-line vehicles or engines?

(a) If you certify vehicles to the standards of this part, you must test them as described in this subpart. If your vehicle is certified to g/kW-hr standards, then test the engine; otherwise, test the vehicle. The provisions of this subpart do not apply to small-volume manufacturers.

(b) We may suspend or revoke your certificate of conformity for certain engine families if your production-line vehicles or engines do not meet emission standards or you do not fulfill your obligations under this subpart (see §§ 1051.325 and 1051.340).

(c) The requirements of this part do not affect our ability to do selective enforcement audits, as described in part 1068 of this chapter.

(d) You may ask to use an alternate program for testing production-line vehicles or engines. In your request, you must show us that the alternate program gives equal assurance that your products meet the requirements of this part. If we approve your alternate program, we may waive some or all of this part's requirements.

(e) If you certify an engine family with carryover emission data, as described in § 1051.235(c), and these equivalent engine families consistently meet the emission standards with production-line testing over the preceding two-year period, you may ask for a reduced testing rate for further production-line testing for that family. The minimum testing rate is one vehicle or engine per engine family. If we reduce your testing rate, we may limit our approval to a single model year.

(f) We may ask you to make a reasonable number of production-line vehicles or engines available for a reasonable time so we can test or inspect them for compliance with the requirements of this part.

§ 1051.305 How must I prepare and test my production-line vehicles or engines?

(a) *Test procedures.* Test your production-line vehicles or engines using the applicable testing procedures in subpart F of this part to show you meet the emission standards in subpart B of this part.

(b) *Modifying a test vehicle or engine.* Once a vehicle or engine is selected for testing (see § 1051.310), you may adjust, repair, prepare, or modify it or check its emissions only if one of the following is true:

(1) You document the need for doing so in your procedures for assembling

and inspecting all your production vehicles or engines and make the action routine for all the vehicles or engines in the engine family.

(2) This subpart otherwise specifically allows your action.

(3) We approve your action in advance.

(c) *Malfunction.* If a vehicle or engine malfunction prevents further emission testing, ask us to approve your decision to either repair it or delete it from the test sequence.

(d) *Setting adjustable parameters.*

Before any test, we may adjust or require you to adjust any adjustable parameter to any setting within its physically adjustable range.

(1) We may adjust idle speed outside the physically adjustable range as needed until the vehicle or engine has stabilized emission levels (see paragraph (e) of this section). We may ask you for information needed to establish an alternate minimum idle speed.

(2) We may make or specify adjustments within the physically adjustable range by considering their effect on emission levels, as well as how likely it is someone will make such an adjustment with in-use vehicles.

(e) *Stabilizing emission levels.* Before you test production-line vehicles or engines, you may operate the vehicle or engine to stabilize the emission levels. Using good engineering judgment, operate your vehicles or engines in a way that represents the way they will be used. You may operate each vehicle or engine for no more than the greater of two periods:

(1) 50 hours.

(2) The number of hours you operated your emission-data vehicle for certifying the engine family (see 40 CFR part 1065, subpart E).

(f) *Damage during shipment.* If shipping a vehicle or engine to a remote facility for production-line testing makes necessary an adjustment or repair, you must wait until after the after the initial emission test to do this work. We may waive this requirement if the test would be impossible or unsafe, or if it would permanently damage the vehicle or engine. Report to us, in your written report under § 1051.345, all adjustments or repairs you make on test vehicles or engines before each test.

(g) *Retesting after invalid tests.* You may retest a vehicle or engine if you determine an emission test is invalid. Explain in your written report reasons for invalidating any test and the emission results from all tests. If you retest a vehicle or engine and, within ten days after testing, ask to substitute results of the new tests for the original

ones, we will answer within ten days after we receive your information.

§ 1051.310 How must I select vehicles or engines for production-line testing?

(a) Use test results from two vehicles or engines for each engine family to calculate the required sample size for the model year. Update this calculation with each test.

(1) For engine families with projected annual sales of at least 1600, the test periods are consecutive quarters (3 months).

(2) For engine families with projected annual sales below 1600, the test period is the whole model year.

(b) Early in each test period, randomly select and test an engine from the end of the assembly line for each engine family.

(1) In the first test period for newly certified engines, randomly select and test one more engine. Then, calculate the required sample size for the test period as described in paragraph (c) of this section.

(2) In later test periods or for engine families relying on previously submitted test data, combine the new test result with the last test result from the previous test period. Then, calculate the required sample size for the new test period as described in paragraph (c) of this section.

(c) Calculate the required sample size for each engine family. Separately calculate this figure for HC, NO_x (or HC+NO_x), and CO. The required sample size is the greater of these calculated values. Use the following equation:

$$N = \left[\frac{(t_{95} \times \sigma)}{(x - \text{STD})} \right]^2 + 1$$

Where:

N = Required sample size for the model year.

t₉₅ = 95% confidence coefficient, which depends on the number of tests completed, n, as specified in the table in paragraph (c)(1) of this section. It defines 95% confidence intervals for a one-tail distribution.

x = Mean of emission test results of the sample.

STD = Emission standard.

σ = Test sample standard deviation (see paragraph (c)(2) of this section).

(1) Determine the 95% confidence coefficient, t₉₅, from the following table:

n	t ₉₅	n	t ₉₅	n	t ₉₅
2	6.31	12	1.80	22	1.72
3	2.92	13	1.78	23	1.72
4	2.35	14	1.77	24	1.71
5	2.13	15	1.76	25	1.71
6	2.02	16	1.75	26	1.71
7	1.94	17	1.75	27	1.71
8	1.90	18	1.74	28	1.70
9	1.86	19	1.73	29	1.70
10	1.83	20	1.73	30+	1.70
11	1.81	21	1.72		

(2) Calculate the standard deviation, σ, for the test sample using the following formula:

$$\sigma = \sqrt{\frac{\sum (X_i - x)^2}{n - 1}}$$

Where:

X_i = Emission test result for an individual vehicle or engine.

n = The number of tests completed in an engine family.

(d) Use final deteriorated test results to calculate the variables in the equations in paragraph (c) of this section (see § 1051.315(a)).

(e) After each new test, recalculate the required sample size using the updated mean values, standard deviations, and the appropriate 95% confidence coefficient.

(f) Distribute the remaining vehicle or engine tests evenly throughout the rest of the test period. You may need to adjust your schedule for selecting

vehicles or engines if the required sample size changes. Continue to randomly select vehicles or engines from each engine family; this may involve testing vehicles or engines that operate on different fuels.

(g) Continue testing any engine family for which the sample mean, x, is greater than the emission standard. This applies if the sample mean for either HC, NO_x (or HC+NO_x) or for CO is greater than the emission standard. Continue testing until one of the following things happens:

(1) The sample size, n, for an engine family is greater than the required sample size, N, and the sample mean, x, is less than or equal to the emission standard.

(2) The engine family does not comply according to § 1051.325.

(3) You test 30 vehicles or engines from the engine family.

(4) You test one percent of your projected annual U.S.-directed

production volume for the engine family.

(h) You may elect to test more randomly chosen vehicles or engines than we require. Include these vehicles or engines in the sample size calculations.

§ 1051.315 How do I know when my engine family does not comply?

(a) Calculate your test results. Round them to the number of decimal places in the emission standard expressed to one more decimal place.

(1) *Initial and final test results.* Calculate and round the test results for each vehicle or engine. If you do several tests on a vehicle or engine, calculate the initial test results, then add them together and divide by the number of tests and round for the final test results on that vehicle or engine.

(2) *Final deteriorated test results.* Apply the deterioration factor for the engine family to the final test results (see § 1051.240(c)).

(b) Construct the following CumSum Equation for each engine family (for HC, NO_x (or HC+NO_x), and CO emissions):

$$C_i = C_{i-1} + X_i - (STD + F)$$

Where:

C_i = The current CumSum statistic.

C_{i-1} = The previous CumSum statistic.

Prior to any testing, the CumSum statistic is 0 (i.e. $C_0 = 0$).

X_i = The current emission test result for an individual vehicle or engine.

STD = Emission standard.

$$F = 0.25 \times \sigma.$$

(c) Use final deteriorated test results to calculate the variables in the equation in paragraph (b) of this section (see § 1051.315(a)).

(d) After each new test, recalculate the CumSum statistic.

(e) If you test more than the required number of vehicles or engines, include the results from these additional tests in the CumSum Equation.

(f) After each test, compare the current CumSum statistic, C_i , to the recalculated Action Limit, H, defined as $H = 5.0 \times \sigma$.

(g) If the CumSum statistic exceeds the Action Limit in two consecutive tests, the engine family does not comply with the requirements of this part. Tell us within ten working days if this happens.

(h) If you amend the application for certification for an engine family (see § 1051.225), do not change any previous calculations of sample size or CumSum statistics for the model year.

§ 1051.320 What happens if one of my production-line vehicles or engines fails to meet emission standards?

(a) If you have a production-line vehicle or engine with final deteriorated test results exceeding one or more emission standards (see § 1051.315(a)), the certificate of conformity is automatically suspended for that failing vehicle or engine. You must take the following actions before your certificate of conformity can cover that vehicle or engine:

(1) Correct the problem and retest the vehicle or engine to show it complies with all emission standards.

(2) Include in your written report a description of the test results and the remedy for each vehicle or engine (see § 1051.345).

(b) You may at any time ask for a hearing to determine whether the tests and sampling methods were proper (see § 1051.820).

§ 1051.325 What happens if an engine family does not comply?

(a) We may suspend your certificate of conformity for an engine family if it fails to comply under § 1051.315. The

suspension may apply to all facilities producing vehicles or engines from an engine family, even if you find noncompliant vehicles or engines only at one facility.

(b) We will tell you in writing if we suspend your certificate in whole or in part. We will not suspend a certificate until at least 15 days after the engine family became noncompliant. The suspension is effective when you receive our notice.

(c) Up to 15 days after we suspend the certificate for an engine family, you may ask for a hearing to determine whether the tests and sampling methods were proper (see § 1051.820). If we agree before a hearing that we used erroneous information in deciding to suspend the certificate, we will reinstate the certificate.

§ 1051.330 May I sell vehicles from an engine family with a suspended certificate of conformity?

You may sell vehicles that you produce after we suspend the engine family's certificate of conformity under § 1048.315 only if one of the following occurs:

(a) You test each vehicle or engine you produce and show it complies with emission standards that apply.

(b) We conditionally reinstate the certificate for the engine family. We may do so if you agree to recall all the affected vehicles and remedy any noncompliance at no expense to the owner if later testing shows that the engine family still does not comply.

§ 1051.335 How do I ask EPA to reinstate my suspended certificate?

(a) Send us a written report asking us to reinstate your suspended certificate. In your report, identify the reason for noncompliance, propose a remedy, and commit to a date for carrying it out. In your proposed remedy include any quality control measures you propose to keep the problem from happening again.

(b) Give us data from production-line testing that shows the remedied engine family complies with all the emission standards that apply.

§ 1051.340 When may EPA revoke my certificate under this subpart and how may I sell these vehicles again?

(a) We may revoke your certificate for an engine family in the following cases:

(1) You do not meet the reporting requirements.

(2) Your engine family fails to meet emission standards and your proposed remedy to address a suspended certificate under § 1051.325 is inadequate to solve the problem or requires you to change the vehicle's design or emission-control system.

(b) To sell vehicles from an engine family with a revoked certificate of conformity, you must modify the engine family and then show it complies with the requirements of this part.

(1) If we determine your proposed design change may not control emissions for the vehicle's full useful life, we will tell you within five working days after receiving your report. In this case we will decide whether production-line testing will be enough for us to evaluate the change or whether you need to do more testing.

(2) Unless we require more testing, you may show compliance by testing production-line vehicles or engines as described in this subpart.

(3) We will issue a new or updated certificate of conformity when you have met these requirements.

§ 1051.345 What production-line testing records must I send to EPA?

(a) Within 30 calendar days of the end of each calendar quarter, send us a report with the following information:

(1) Describe any facility used to test production-line vehicles or engines and state its location.

(2) State the total U.S.-directed production volume and number of tests for each engine family.

(3) Describe how you randomly selected vehicles or engines.

(4) Describe your test vehicles or engines, including the engine family's identification and the vehicle's model year, build date, model number, identification number, and number of hours of operation before testing for each test vehicle or engine.

(5) Identify where you accumulated hours of operation on the vehicles or engines and describe the procedure and schedule you used.

(6) Provide the test number; the date, time and duration of testing; test procedure; initial test results before and after rounding; final test results; and final deteriorated test results for all tests. Provide the emission results for all measured pollutants. Include information for both valid and invalid tests and the reason for any invalidation.

(7) Describe completely and justify any nonroutine adjustment, modification, repair, preparation, maintenance, or test for the test vehicle or engine if you did not report it separately under this subpart. Include the results of any emission measurements, regardless of the procedure or type of vehicle.

(8) Provide the CumSum analysis required in § 1051.315 for each engine family.

(9) Report on each failed vehicle or engine as described in § 1051.320.

(10) State the date the calendar quarter ended for each engine family.

(b) We may ask you to add information to your written report, so we can determine whether your new vehicles conform with the requirements of this subpart.

(c) An authorized representative of your company must sign the following statement:

We submit this report under Sections 208 and 213 of the Clean Air Act. Our production-line testing conformed completely with the requirements of 40 CFR part 1051. We have not changed production processes or quality-control procedures for the engine family in a way that might affect the emission control from production vehicles (or engines). All the information in this report is true and accurate, to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations. (Authorized Company Representative)

(d) Send electronic reports of production-line testing to the Designated Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(e) We will send copies of your reports to anyone from the public who asks for them. We will not release information about your sales or production volumes, which we will consider confidential under 40 CFR part 2.

§ 1051.350 What records must I keep?

(a) Organize and maintain your records as described in this section. We may review your records at any time, so it is important to keep required information readily available.

(b) Keep paper records of your production-line testing for one full year after you complete all the testing required for an engine family in a model year. You may use any additional storage formats or media if you like.

(c) Keep a copy of the written reports described in § 1051.345.

(d) Keep the following additional records:

(1) A description of all test equipment for each test cell that you can use to test production-line vehicles or engines.

(2) The names of supervisors involved in each test.

(3) The name of anyone who authorizes adjusting, repairing, preparing, or modifying a test vehicle or engine and the names of all supervisors who oversee this work.

(4) If you shipped the vehicle or engine for testing, the date you shipped it, the associated storage or port facility, and the date the vehicle or engine arrived at the testing facility.

(5) Any records related to your production-line tests that are not in the written report.

(6) A brief description of any significant events during testing not otherwise described in the written report or in this section.

(e) If we ask, you must give us projected or actual production figures for an engine family. We may ask you to divide your production figures by power rating, displacement, fuel type, or assembly plant (if you produce vehicles or engines at more than one plant).

(f) Keep a list of vehicle or engine identification numbers for all the vehicles or engines you produce under each certificate of conformity. Give us this list within 30 days if we ask for it.

(g) We may ask you to keep or send other information necessary to implement this subpart.

Subpart E—Testing In-Use Engines

§ 1051.401 What provisions apply for in-use testing of my vehicles or engines?

We may conduct in-use testing of any vehicle or engine subject to the standards of this part. If we determine that a substantial number of vehicles or engines do not comply with the regulations of this part throughout their full useful life, we may order the manufacturer to conduct a recall as specified in 40 CFR part 1068.

Subpart F—Test Procedures

§ 1051.501 What procedures must I use to test my vehicles or engines?

(a) For snowmobiles, use the equipment and procedures for spark-ignition engines in part 1065 of this chapter to show your snowmobiles meet the duty-cycle emission standards in § 1051.101. Measure HC, NO_x, CO, and CO₂ emissions using the dilute sampling procedures in part 1065 of this chapter. Use the duty cycle in § 1051.505.

(b) For motorcycles and ATVs, use the equipment, procedures, and duty cycle in 40 CFR part 86, subpart F, to show your vehicles meet the exhaust emission standards in § 1051.102 or § 1051.103.

Measure HC, NO_x, CO, and CO₂. If you certify ATVs using the interim testing provisions of § 1051.145, use the equipment, procedures, and duty cycle described or referenced in that section. Motorcycles and ATVs with engine displacement at or below 169 cc must use the driving schedule in paragraph (c) of Appendix I to part 86. All others must use the driving schedule in paragraph (b) of Appendix I to part 86.

(c) Use the fuels and lubricants specified in 40 CFR part 1065, subpart C, for all the testing and service accumulation we require in this part.

(d) You may use special or alternate procedures, as described in § 1065.10 of this chapter.

(e) We may reject data you generate using alternate procedures if later testing with the procedures in part 1065 of this chapter shows contradictory emission data.

§ 1051.505 What special provisions apply for testing snowmobiles?

Use the following special provisions for testing snowmobiles:

(a) Measure emissions by testing the engine on a dynamometer with the steady-state duty cycle described in Table 1 of this section.

(b) During idle mode, operate the engine with the following parameters:

(1) Hold the speed within your specifications.

(2) Keep the throttle fully closed.

(3) Keep engine torque under 5 percent of the peak torque value at maximum test speed.

(c) For the full-load operating mode, operate the engine at its maximum fueling rate.

(d) Keep the test engine's intake air between -15° C and -5° C (5° F and 23° F). Ambient temperatures during testing must be between -15° C and 30° C (5° F and 86° F).

(e) See part 1065 of this chapter for detailed specifications of tolerances and calculations.

(f) Table 1 follows:

TABLE 1 OF § 1051.501.—5-MODE DUTY CYCLE FOR SNOWMOBILES

Mode No.	Engine speed	Torque	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.12

TABLE 1 OF § 1051.501.—5-MODE DUTY CYCLE FOR SNOWMOBILES—Continued

Mode No.	Engine speed	Torque	Minimum time in mode (minutes)	Weighting factors
2	85	51	5.0	0.27
3	75	33	5.0	0.25
4	65	19	5.0	0.31
5	Idle	0	5.0	0.05

§ 1051.520 How do I perform durability testing?

This section applies for durability testing to determine deterioration factors. A small-volume manufacturer may omit durability testing if it uses our assigned deterioration factors that we establish based on our projection of the likely deterioration in the performance of specific emission controls.

(a) Calculate your deterioration factor by testing a vehicle or engine that is representative of your engine family at a low-hour test point and the end of its useful life. You may also test at intermediate points.

(b) Operate the vehicle or engine over a representative duty cycle for a period at least as long as the useful life (in hours or kilometers). You may operate the vehicle or engine continuously.

(c) You may only perform the scheduled emission-related maintenance specified in § 1051.125. You may not perform any unscheduled maintenance during durability testing unless we approve it in advance.

(d) Use a linear least-squares fit of your test data for each pollutant to calculate your deterioration factor.

Subpart G—Compliance Provisions

§ 1051.601 What compliance provisions apply to these vehicles?

Engine and vehicle manufacturers, as well as owners, operators, and rebuilders of these vehicles, and all other persons, must observe the requirements and prohibitions in part 1068 of this chapter. The compliance provisions in this subpart apply only to the vehicles we regulate in this part.

§ 1051.605 What are the provisions for exempting vehicles from the requirements of this part if they use engines you have certified under the motor-vehicle program or the Large Spark-ignition (SI) program?

(a) This section applies to you if you are the manufacturer of the engine. See § 1051.610 if you are not the engine manufacturer.

(b) The only requirements or prohibitions from this part that apply to

a vehicle that is exempt under this section are in this section and § 1051.610.

(c) If you meet all the following criteria regarding your new vehicle, you are exempt under this section:

(1) You must produce it using an engine covered by a valid certificate of conformity under 40 CFR part 86 or part 1048.

(2) You must not make any changes to the certified engine that we could reasonably expect to increase its exhaust or evaporative emissions. For example, if you make any of the following changes to one of these engines, you do not qualify for this exemption:

(i) Change any fuel system or evaporative system parameters from the certified configuration (this does not apply to refueling emission controls).

(ii) Change any other emission-related components.

(iii) Modify or design the engine cooling system so that temperatures or heat rejection rates are outside the original engine's specified ranges.

(3) You must make sure the engine still has the label we require under 40 CFR part 86 or part 1048.

(4) You must make sure that fewer than 50 percent of the engine model's total sales, from all companies, are used in recreational vehicles.

(d) If you produce both the engine and vehicle under this exemption, you must do all of the following to keep the exemption valid:

(1) Make sure the original emission label is intact.

(2) Add a permanent supplemental label to the engine in a position where it will remain clearly visible after installation in the vehicle. In your engine label, do the following:

(i) Include the heading: "Recreational Vehicle Emission Control Information".

(ii) Include your full corporate name and trademark.

(iii) State: "THIS ENGINE WAS ADAPTED FOR RECREATIONAL USE WITHOUT AFFECTING ITS EMISSION CONTROLS."

(iv) State the date you finished installing (month and year).

(3) Make the original and supplemental labels readily visible after the engine is installed in the vehicle or, if vehicle obscures the engine's labels, make sure the vehicle manufacturer attaches duplicate labels, as described in § 1068.105 of this chapter.

(4) Send the Designated Officer a signed letter by the end of each calendar year (or less often if we tell you) with all the following information:

(i) Identify your full corporate name, address, and telephone number.

(ii) List the models you expect to produce under this exemption in the coming year.

(iii) State: "We produce each listed model for recreational application without making any changes that could increase its certified emission levels, as described in 40 CFR 1051.605."

(e) If your vehicles do not meet the criteria listed in paragraph (c) of this section, they will be subject to the standards and prohibitions of this part. Producing these vehicles without a valid exemption or certificate of conformity would violate the prohibitions in § 1068.100 of this chapter.

(f) If we request it, you must send us emission test data on the applicable recreational duty cycle(s) (see §§ 1051.505 and 1051.510). You may include the data in your application for certification or in your letter requesting the exemption.

(g) Vehicles exempted under this section are subject to all the requirements affecting engines and vehicles under 40 CFR part 86 or part 1048, as applicable. The requirements and restrictions of 40 CFR part 86 or 1048 apply to anyone manufacturing these engines, anyone manufacturing vehicles that use these engines, and all other persons in the same manner as if these engines were used in a motor vehicle or other nonrecreational application.

§ 1051.610 What are the provisions for producing recreational vehicles with engines already certified under the motor-vehicle program or the Large SI program?

(a) You may produce a recreational vehicle using a motor vehicle engine, or a Large SI engine if you meet three criteria:

- (1) The engine or vehicle is certified to 40 CFR part 86 or part 1048.
- (2) The engine is not adjusted outside the manufacturer's specifications.
- (3) The engine or vehicle is not modified in any way that may affect its emission control. This applies to exhaust and evaporative emission controls, but not refueling emission controls.

(b) This section does not apply if you manufacture the engine yourself; see § 1051.605.

§ 1051.615 What are the special provisions for certifying small recreational engines?

(a) If an off-highway motorcycle or ATV has an engine with total displacement of 70 cc or less, you may choose for these engines to meet the Phase 1 emission standards from 40 CFR part 90 that apply to Class I nonhandheld engines instead of the requirements of this part. In this case, all the requirements and prohibitions of 40 CFR part 90 relevant to Class I engines meeting Phase 1 standards apply to these engines and vehicles, with the following additional provisions:

(1) If you qualify as a small-volume manufacturer under this part, emission standards apply beginning with the 2008 model year. Otherwise, emission standards apply beginning with the 2006 model year.

(2) If you qualify as a small-volume manufacturer under this part, the provisions of § 1068.241 of this chapter apply to these engines.

(3) The provisions of § 1068.240 of this chapter apply to these engines.

(b) If you do not certify the engines under 40 CFR part 90, then all the requirements and prohibitions of this part apply to these engines and vehicles.

(c) Once emission standards apply, producing these engines or vehicles without a valid exemption or certificate of conformity under this part or part 90 of this chapter would violate the prohibitions in § 1068.101 of this chapter.

§ 1051.620 When may a manufacturer introduce into commerce an uncertified recreational vehicle to be used for competition?

(a) You may introduce into commerce a new recreational vehicle that is to be used for competition if we grant you an exemption under this section.

(b) We will exempt vehicles that we determine will be used solely for competition. The basis of our determinations are described in paragraphs (b)(1) and (b)(2) and (c) of this section.

(1) *Off-highway motorcycles.* Motorcycles that are marketed and labeled as only for competitive use and which meet at least four of the criteria listed in paragraphs (b)(1)(i) through (v) of this section are considered to be used solely for competition, except in cases where other information is available that indicates that they are not used solely for competition. The following features are indicative of motorcycles used solely for competition:

(i) The absence of a headlight or other lights.

(ii) The absence of a spark arrestor.

(iii) The absence of manufacturer warranty.

(iv) Suspension travel greater than 10 inches.

(v) Engine displacement greater than 50 cc.

(2) *Snowmobiles and ATVs.* Snowmobiles and ATVs meeting all of the following criteria are considered to be used solely for competition, except in cases where other information is available that indicates that they are not used solely for competition:

(i) The vehicle or vehicle may not be sold in any public dealership.

(ii) Sale of the vehicle must be limited to professional racers or other qualified racers.

(iii) The vehicle must have performance characteristics that are substantially superior to noncompetitive models.

(c) Vehicles not meeting the applicable criteria listed in paragraph (b) of this section will be exempted only in cases where the manufacturer has clear and convincing evidence that the vehicles for which the exemption is being sought will be used solely for competition.

(d) You must permanently label vehicles exempted under this section to clearly indicate that they are to be used only for competition. Failure to properly label a vehicle will void the exemption for that vehicle.

(e) If we request it, you must provide us any information we need to determine whether the vehicles are used solely for competition.

§ 1051.625 What special provisions apply to unique snowmobile designs?

(a) We may permit you to produce up to 300 snowmobiles per year that are certified to less stringent emission standards than those in § 1051.101, as long as you meet all the conditions and requirements in this section.

(b) To be eligible for these alternate standards, you must be a small-volume manufacturer.

(c) To apply for alternate standards under this section, send the Designated Officer a written request. In your request, do two things:

(1) Show that the snowmobile has unique design, calibration, or operating characteristics that make it atypical and infeasible or highly impractical to meet the emission standards in § 1051.101, considering technology, cost, and other factors.

(2) Identify the level of compliance you can achieve, including a description of available emission-control technologies and any constraints that may prevent more effective use of these technologies.

(d) You must give us other relevant information if we ask for it.

(e) An authorized representative of your company must sign the request and include the statement: "All the information in this request is true and accurate, to the best of my knowledge."

(f) Send your request for this extension at least nine months before the relevant deadline. If different deadlines apply to companies that are not small-volume manufacturers, do not send your request before the regulations in question apply to the other manufacturers.

(g) If we approve your request, we will set alternate standards for your qualifying snowmobiles. These standards will not be above 400 g/kW-hr for CO or 150 g/kW-hr for HC.

(h) You may produce these snowmobiles to meet the alternate standards we establish under this section as long as you continue to produce them at the same or lower emission levels.

(i) Do not include snowmobiles you produce under this section in any averaging, banking, or trading calculations under Subpart H of this part.

(j) You must meet all the requirements of this part, except as noted in this section.

Subpart H—Averaging, Banking, and Trading for Certification

§ 1051.701 General provisions.

(a) You may average, bank, and trade emission credits for certification as described in this subpart to meet the average standards of this part. To do this you must show that your average emission levels are below the applicable standards in subpart B of this part, or that you have sufficient credits to offset a credit deficit for the model year (as calculated in § 1051.720).

(b) There are separate averaging, banking, and trading programs for snowmobiles, ATVs, and off-highway motorcycles. You may not exchange credits from engine families of one type of these vehicles with those from engine families of another type. You may also not exchange credits with other families of the same type if you use different measurement procedures for the different engine families (for example, ATVs certified to chassis-based vs. engine-based standards).

(c) The definitions of Subpart I of this part apply to this subpart. The following definitions also apply:

(1) *Average standard* means the standard that applies on average to all your vehicle under this part.

(2) *Broker* means any entity that facilitates a trade between a buyer and seller.

(3) *Buyer* means the entity that receives credits as a result of trade or transfer.

(4) *Reserved credits* means credits generated but not yet verified by EPA at the end of year report review.

(5) *Seller* means the entity that provides credits during a trade or transfer.

(d) Do not include any exported vehicles in the certification averaging, banking, and trading program. Include only vehicles certified under this part.

§ 1051.705 How do I average emission levels?

(a) As specified in subpart B of this part, certify each vehicle to a family emission limit (FEL).

(b) Calculate a preliminary average emission level according to § 1051.720

using projected production volumes for your application for certification.

(c) After the end of your model year, calculate a final average emission level according to § 1051.720 for each type of recreational vehicle or engine you manufacture or import. Use actual production volumes.

(d) If your preliminary average emission level is below the allowable average standard, see § 1051.710 for information about generating and banking emission credits. These credits will be considered reserved until verified by EPA during the end of year report review.

§ 1051.710 How do I generate and bank emission credits?

(a) If your average emission level is below the average standard, you may calculate credits according to § 1051.720.

(b) You may generate credits if you are a certifying manufacturer.

(c) You may bank unused emission credits, but only after the end of the calendar year and after we have reviewed your end-of-year reports. Credits you generate do not expire.

(d) During the calendar year and before you send in your end-of-year report, you may consider reserved any credits you originally designate for banking during certification. You may redesignate these credits for trading or transfer in your end-of-year report, but they are not valid to demonstrate compliance until verified.

(e) You may use for averaging or trading any credits you declared for banking from the previous calendar year that we have not reviewed. But, we may

revoke these credits later—following our review of your end-of-year report or audit actions. For example, this could occur if we find that credits are based on erroneous calculations; or that emission levels are misrepresented, unsubstantiated, or derived incorrectly in the certification process.

§ 1051.715 How do I trade emission credits?

(a) You may trade only banked emission credits, not reserved credits.

(b) You may trade banked credits to any certifying manufacturer.

(c) If a negative credit balance results from a credit trade, both buyers and sellers are liable, except in cases involving fraud. We may void the certificates of all emission families participating in a negative trade.

(1) If you buy credits but have not caused the negative credit balance, you must only supply more credits equivalent to the amount of invalid credits you used.

(2) If you caused the credit shortfall, you may be subject to the requirements of § 1051.730(b)(6).

§ 1051.720 How do I calculate my average emission level or emission credits?

(a) Calculate your average emission level for each type of recreational vehicle or engine for each model year according to the following equation and round it to the nearest tenth of a g/km or g/kW-hr. Use consistent units throughout the calculation.

(1) Calculate the average emission level as:

$$\text{Emission level} = \left[\sum_i (\text{FEL}_i \times (\text{UL})_i \times (\text{Production})_i) \right] / \left[\sum_i (\text{Production})_i \times (\text{UL})_i \right]$$

Where:

FEL_i = The FEL to which the engine family is certified.

UL_i = The useful life of the engine family.

Production_i = The number of vehicles in the engine family.

(2) Use production projections for initial certification, and actual production volumes to determine compliance at the end of the model year.

(b) If your average emission level is below the average standard, calculate credits available for banking according to the following equation and round them to the nearest tenth of a gram:

$$\text{Credit} = [(\text{Average standard} - \text{Emission level})] \times \left[\sum_i (\text{Production})_i \times (\text{UL})_i \right]$$

(c) If your average emission level is above the average standard, calculate your preliminary credit deficit according to the following equation, rounding to the nearest tenth of a gram:

$$\text{Deficit} = [(\text{Emission level} - \text{Average standard})] \times \left[\sum_i (\text{Production})_i \times (\text{UL})_i \right]$$

§ 1051.725 What information must I retain?

(a) Maintain and keep five types of properly organized and indexed records for each group and for each emission family:

- (1) Model year and EPA emission family.
- (2) FEL.
- (3) Useful life.
- (4) Projected production volume for the model year.
- (5) Actual production volume for the model year.

(b) Keep paper records of this information for three years from the due date for the end-of-year report. You may use any additional storage formats or media if you like.

(c) Follow § 1051.730 to send us the information you must keep.

(d) We may ask you to keep or send other information necessary to implement this subpart.

§ 1051.730 What information must I report?

(a) Include the following information in your applications for certification:

(1) A statement that, to the best of your belief, you will not have a negative credit balance for any type of recreational vehicle or engine when all credits are calculated. This means that if you believe that your average emission level will be above the standard (i.e., that you will have a deficit for the model year), you must have banked credits (or project to have traded credits) to offset the deficit.

(2) Detailed calculations of projected emission credits (zero, positive, or negative) based on production projections.

(i) If you project a credit deficit, state the source of credits needed to offset the credit deficit.

(ii) If you project credits, state whether you will reserve them for banking or transfer them.

(b) At the end of each model year, send an end-of-year report.

(1) Make sure your report includes three things:

(i) Calculate in detail your average emission level and any emission credits (zero, positive, or negative) based on actual production volumes.

(ii) If your average emission level is above the allowable average standard, state the source of credits needed to offset the credit deficit.

(iii) If your average emission level is below the allowable average standard, state whether you will reserve the credits for banking or transfer them.

(2) Base your production volumes on the point of first retail sale. This point is called the final product-purchase location.

(3) Send end-of-year reports to the Designated Officer within 120 days of the end of the model year. If you send reports later, you are violating the Clean Air Act.

(4) If you generate credits for banking and you do not send your end-of-year reports within 120 days after the end of the model year, you may not use or trade the credits until we receive and review your reports. You may not use projected credits pending our review.

(5) You may correct errors discovered in your end-of-year report, including errors in calculating credits according to the following table:

If . . .	And if . . .	Then we . . .
(i) Our review discovers an error in your end-of-year report that increases your credit balance.	the discovery occurs within 180 days of receipt.	restore the credits for your use.
(ii) You discover an error in your report that increases your credit balance.	the discovery occurs within 180 days of receipt.	restore the credits for your use.
(iii) We or you discover an error in your report that increases your credit balance.	the discovery occurs more than 180 days after receipt.	do not restore the credits for your use.
(iv) We discover an error in your report that reduces your credit balance.	at any time after your receipt	reduce your credit balance.

(6) If our review of a your end-of-year report shows a negative balance, you may buy credits to bring your credit balance to zero. But you must buy 1.1 credits for each 1.0 credit needed. If enough credits are not available to bring your credit balance to zero, we may void the certificates for all families certified to standards above the allowable average.

(c) Within 90 days of any credit trade or transfer, you must send the Designated Officer a report of the trade or transfer that includes three types of information:

(1) The corporate names of the buyer, seller, and any brokers.

(2) Information about the credits that depends on whether you trade or transfer them.

(i) For trades, describe the banked credits being traded.

(ii) For transfers, calculate the credits in detail and identify the source or use of the credits.

(3) Copies of contracts related to credit trading or transfer from the buyer, seller, and broker, as applicable.

(d) Include in each report a statement certifying the accuracy and authenticity of its contents.

(e) We may void a certificate of conformity for any emission family if you do not keep the records this section requires or give us the information when we ask for it.

Subpart I—Definitions and Other Reference Information

§ 1051.801 What definitions apply to this part?

The following definitions apply to this part. The definitions apply to all

subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Adjustable parameter means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation.

Aftertreatment means relating to any system, component, or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

All-terrain vehicle means a nonroad vehicle with three or more wheels and a seat, designed for operation over rough terrain and intended primarily for

transportation. This includes both land-based and amphibious vehicles.

Auxiliary emission-control device means any element of design that senses temperature, engine rpm, motive speed, transmission gear, atmospheric pressure, manifold pressure or vacuum, or any other parameter to activate, modulate, delay, or deactivate the operation of any part of the emission-control system. This also includes any other feature that causes in-use emissions to be higher than those measured under test conditions, except as we allow under this part.

Broker means any entity that facilitates a trade of emission credits between a buyer and seller.

Calibration means the set of specifications and tolerances specific to a particular design, version, or application of a component or assembly capable of functionally describing its operation over its working range.

Certification means obtaining a certificate of conformity for an engine family that complies with the emission standards and requirements in this part.

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

Crankcase emissions means airborne substances emitted to the atmosphere from any part of the engine crankcase's ventilation or lubrication systems. The crankcase is the housing for the crankshaft and other related internal parts.

Designated Officer means the Manager, Engine Compliance Programs Group (6403-J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-control system means any device, system, or element of design that controls or reduces the regulated emissions from a vehicle.

Emission-data vehicle means a vehicle or engine that is tested for certification.

Emission-related maintenance means maintenance that substantially affects emissions or is likely to substantially affect emissions deterioration.

Engine family means a group of vehicles with similar emission characteristics, as specified in § 1051.230.

Fuel system means all components involved in transporting, metering, and mixing the fuel from the fuel tank to the combustion chamber(s), including the fuel tank, fuel tank cap, fuel pump, fuel filters, fuel lines, carburetor or fuel-injection components, and all fuel-system vents.

Good engineering judgment has the meaning we give it in § 1068.5 of this chapter.

Hydrocarbon (HC) means the hydrocarbon group on which the emission standards are based for each fuel type. For gasoline- and LPG-fueled engines, HC means total hydrocarbon (THC). For natural gas-fueled engines, HC means nonmethane hydrocarbon (NMHC). For alcohol-fueled engines, HC means total hydrocarbon equivalent (THCE).

Identification number means a unique specification (for example, model number/serial number combination) that allows someone to distinguish a particular vehicle or engine from other similar vehicle or engines.

Manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures a vehicle or engine for sale in the United States or otherwise introduces a new vehicle or engine into commerce in the United States. This includes importers.

Maximum test torque means the torque output observed with the maximum fueling rate possible at a given speed.

Model year means one of the following things:

(1) For freshly manufactured vehicles or engines (see definition of "new" paragraph (1)), model year means one of the following:

(i) Calendar year.
(ii) Your annual new model production period if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For a vehicle or engine that is converted to a nonroad vehicle or engine after being placed into service in a motor vehicle, model year means the calendar year in which the vehicle or engine was originally produced (see definition of "new" paragraph (2)).

(3) For a nonroad vehicle excluded under § 1051.5 that is later converted to operate in an application that is not excluded, model year means the calendar year in which the vehicle was originally produced (see definition of "new" paragraph (3)).

(4) For engines that are not freshly manufactured but are installed in new nonroad vehicle, model year means the calendar year in which the engine is installed in the new nonroad vehicle (see definition of "new" paragraph (4)).

(5) For a vehicle or engine modified by an importer (not the original

manufacturer) who has a certificate of conformity for the imported vehicle or engine (see definition of "new" paragraph (5)), model year means one of the following:

(i) The calendar year in which the importer finishes modifying and labeling the vehicle or engine.

(ii) Your annual production period for producing vehicles or engines if it is different than the calendar year; follow the guidelines in paragraph (1)(ii) of this definition.

(6) For a vehicle or engine you import that does not meet the criteria in paragraphs (1) through (5) of the definition of "new" model year means the calendar year in which the manufacturer completed the original assembly of the vehicle or engine. In general, this applies to used equipment that you import without conversion or major modification.

Motor vehicle has the meaning we give in § 85.1703(a) of this chapter. In general, *motor vehicle* means a self-propelled vehicle that can transport one or more people or any material, but does not include any of the following:

(1) Vehicles having a maximum ground speed over level, paved surfaces no higher than 40 km per hour (25 miles per hour).

(2) Vehicles that lack features usually needed for safe, practical use on streets or highways—for example, safety features required by law, a reverse gear (except for motorcycles), or a differential.

(3) Vehicles whose operation on streets or highways would be unsafe, impractical, or highly unlikely. Examples are vehicles with tracks instead of wheels, very large size, or features associated with military vehicles, such as armor or weaponry.

New means relating to any of the following vehicles or engines:

(1) A freshly manufactured engine or vehicle for which the ultimate buyer has never received the equitable or legal title. The vehicle or engine is no longer new when the ultimate buyer receives this title or the product is placed into service, whichever comes first.

(2) An engine originally manufactured as a motor vehicle engine that is later intended to be used in a piece of nonroad equipment. The engine is no longer new when it is placed into nonroad service.

(3) A nonroad engine that has been previously placed into service in an application we exclude under § 1051.5, where that engine is installed in a piece of equipment for which these exclusions do not apply. The engine is no longer new when it is placed into nonroad service.

(4) An engine not covered by paragraphs (1) through (3) of this definition that is intended to be installed in new nonroad equipment. The engine is no longer new when the ultimate buyer receives a title for the equipment or the product is placed into service, whichever comes first.

(5) An imported nonroad vehicle or engine covered by a certificate of conformity issued under this part, where someone other than the original manufacturer modifies the vehicle or engine after its initial assembly and holds the certificate. The vehicle or engine is no longer new when it is placed into nonroad service.

(6) An imported nonroad vehicle or engine that is not covered by a certificate of conformity issued under this part at the time of importation.

New nonroad equipment means either of the following things:

(1) A nonroad vehicle or other piece of equipment for which the ultimate buyer has never received the equitable or legal title. The product is no longer new when the ultimate buyer receives this title or the product is placed into service, whichever comes first.

(2) An imported nonroad piece of equipment with a vehicle or engine not covered by a certificate of conformity issued under this part at the time of importation and manufactured after the date for applying the requirements of this part.

Noncompliant vehicle or engine means a vehicle or engine that was originally covered by a certificate of conformity, but is not in the certified configuration or otherwise does not comply with the conditions of the certificate.

Nonconforming vehicle or engine means a vehicle or engine not covered by a certificate of conformity that would otherwise be subject to emission standards.

Nonmethane hydrocarbon means the difference between the emitted mass of total hydrocarbons and the emitted mass of methane.

Nonroad means relating to nonroad vehicle or engines.

Nonroad engine has the meaning given in § 1068.25 of this chapter. In general this means all internal-combustion engines except motor vehicle engines, stationary engines, or engines used solely for competition. This part only applies to nonroad engines that are used in snowmobiles, off-highway motorcycles, and ATVs (see § 1051.5).

Off-highway motorcycle means a two-wheeled vehicle with a nonroad engine and a seat (excluding marine vessels

and aircraft). Note: highway motorcycles are regulated under 40 CFR part 86.

Oxides of nitrogen means nitric oxide (NO) and nitrogen dioxide (NO₂). Oxides of nitrogen are expressed quantitatively as if the NO were in the form of NO₂ (assume a molecular weight for oxides of nitrogen equivalent to that of NO₂).

Phase 1 means relating to Phase 1 standards of § 1051.101 or § 1051.103.

Phase 2 means relating to Phase 2 standards of § 1051.101 or § 1051.103.

Physically adjustable range means the entire range over which an engine parameter can be adjusted, except as modified by § 1051.115(c).

Placed into service means used for its intended purpose.

Recreational means, for purposes of this part, relating to snowmobiles, all-terrain vehicles, and off-highway motorcycles we regulate under this part. Note that 40 CFR part 90 applies to other recreational vehicles.

Revoke means to discontinue the certificate for an engine family. If we revoke a certificate, you must apply for a new certificate before continuing to produce the affected vehicles or engines. This does not apply to vehicles or engines you no longer possess.

Round means to round numbers according to ASTM E29-93a, which is incorporated by reference (see § 1051.810), unless otherwise specified.

Scheduled maintenance means adjusting, repairing, removing, disassembling, cleaning, or replacing components or systems that is periodically needed to keep a part from failing or malfunctioning. It also may mean actions you expect are necessary to correct an overt indication of failure or malfunction for which periodic maintenance is not appropriate.

Small-volume manufacturer means:

(1) For motorcycles and ATVs, a manufacturer with U.S.-directed production of fewer than 5,000 off-road motorcycles and ATVs (combined number) in 2001. For manufacturers owned by a parent company, the limit applies to the production of the parent company and all of its subsidiaries.

(2) For snowmobiles, a manufacturer with annual U.S. directed production of fewer than 300 snowmobiles in 2001. For manufacturers owned by a parent company, the limit applies to the production of the parent company and all of its subsidiaries.

Snowmobile means a vehicle designed to operate outdoors only over snow-covered ground, with a maximum width of 1.5 meters or less.

Spark-ignition means relating to a type of engine with a spark plug (or other sparking device) and with

operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

Stoichiometry means the proportion of a mixture of air and fuel such that the fuel is fully oxidized with no remaining oxygen. For example, stoichiometric combustion in gasoline engines typically occurs at an air-fuel mass ratio of about 14.7.

Suspend means to temporarily discontinue the certificate for an engine family. If we suspend a certificate, you may not sell vehicles or engines from that engine family unless we reinstate the certificate or approve a new one.

Test sample means the collection of vehicles or engines selected from the population of an engine family for emission testing.

Test vehicle or engine means a vehicle or engine in a test sample.

Total hydrocarbon means the combined mass organic compounds measured by our total hydrocarbon test procedure, expressed as a hydrocarbon with a hydrogen-to-carbon mass ratio of 1.85:1.

Total hydrocarbon equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

Ultimate buyer means ultimate purchaser.

Ultimate purchaser means, with respect to any new vehicle or engine, the first person who in good faith purchases such vehicle or engine for purposes other than resale.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

U.S.-directed production means the number of vehicle units, subject to the requirements of this part, produced by a manufacturer (and/or imported) for which the manufacturer has a reasonable assurance that sale was or will be made to ultimate buyers in the United States.

Useful life means the period during which the vehicle is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years.

It is the period during which a new vehicle is required to comply with all applicable emission standards.

Void means to invalidate a certificate or an exemption. If we void a certificate, all the vehicles produced under that engine family for that model year are considered noncompliant, and you are liable for each vehicle produced under the certificate and may face civil or criminal penalties or both. If we void an exemption, all the vehicles produced under that exemption are considered uncertified (or nonconforming), and you are liable for each vehicle produced under the exemption and may face civil or criminal penalties or both. You may not produce any additional vehicles using the voided exemption.

§ 1051.805 What symbols, acronyms, and abbreviations does this part use?

The following symbols, acronyms, and abbreviations apply to this part:

°C	degrees Celsius.
ASTM	American Society for Testing and Materials.
ATV	all-terrain vehicle.
cc	cubic centimeters.
CO	carbon monoxide.
CO ₂	carbon dioxide.
EPA	Environmental Protection Agency.
g/kW-hr	grams per kilowatt-hour.
LPG	liquefied petroleum gas.
m	meters.
mm Hg	millimeters of mercury.
NMHC	nonmethane hydrocarbons.
NO _x	oxides of nitrogen (NO and NO ₂).
rpm	revolutions per minute.
SAE	Society of Automotive Engineers.
SI	spark-ignition.
THC	total hydrocarbon.
THCE	total hydrocarbon equivalent.
U.S.C.	United States Code.

§ 1051.810 What materials does this part reference?

We have incorporated by reference the documents listed in this section. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at U.S. EPA, OAR, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460 or Office of the Federal Register, 800 N. Capitol St., NW., 7th Floor, Suite 700, Washington, DC.

(a) *ASTM material.* Table 1 of § 1051.810 lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. The second column is for information only and may not include all locations. Anyone may receive copies of these materials from American Society for Testing and

Materials, 1916 Race St., Philadelphia, PA 19103. Table 1 follows:

TABLE 1 OF § 1051.810.—ASTM MATERIALS

Document No. and name	Part 1051 reference
ASTM E29-93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	1051.240, 1051.315, 1051.345, 1051.410, 1051.415.

(b) *ISO material.* [Reserved]

§ 1051.815 How should I request EPA to keep my information confidential?

(a) Clearly show what you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in § 2.204 of this chapter.

§ 1051.820 How do I request a public hearing?

(a) File a request for a hearing with the Designated Officer within 15 days of a decision to deny, suspend, revoke, or void your certificate. If you ask later, we may give you a hearing for good cause, but we do not have to.

(b) Include the following in your request for a public hearing:

(1) State which engine family is involved.

(2) State the issues you intend to raise. We may limit these issues, as described elsewhere in this part.

(3) Summarize the evidence supporting your position and state why you believe this evidence justifies granting or reinstating the certificate.

(c) We will hold the hearing as described in 40 CFR part 1068, subpart F.

PART 1065—TEST PROCEDURES AND EQUIPMENT

Subpart A—Applicability and General Provisions

Sec.	
1065.1	Applicability.
1065.5	Overview of test procedures.
1065.10	Other test procedures.

1065.15	Engine testing.
1065.20	Limits for test conditions.

Subpart B—Equipment and Analyzers

1065.101	Overview. [Reserved]
1065.105	Dynamometer and engine equipment specifications.
1065.110	Exhaust gas sampling system; spark-ignition (SI) engines.
1065.115	Exhaust gas sampling system; compression-ignition (CI) engines. [Reserved]
1065.120	Analyzers (overview/general response characteristics).
1065.125	Hydrocarbon analyzers.
1065.130	NO _x analyzers.
1065.135	CO and CO ₂ analyzers.
1065.140	Smoke meters. [Reserved]
1065.145	Flow meters.

Subpart C—Test Fuels and Analytical Gases

1065.201	General requirements for test fuels.
1065.205	Test fuel specifications for distillate diesel fuel. [Reserved]
1065.210	Test fuel specifications for gasoline.
1065.215	Test fuel specifications for natural gas.
1065.220	Test fuel specifications for liquefied petroleum gas.
1065.240	Lubricating oils.
1065.250	Analytical gases.

Subpart D—Analyzer and Equipment Calibrations

1065.301	Overview.
1065.305	Torque calibration.

Subpart E—Engine Preparation and Service Accumulation

1065.405	Preparing and servicing a test engine.
1065.410	Service limits for stabilized test engines.
1065.420	Durability demonstration.

Subpart F—Running an Emission Test

1065.500	Overview of the engine dynamometer test procedures.
1065.510	Engine mapping procedures.
1065.515	Transient test cycle generation.
1065.520	Engine starting, restarting, and shutdown.
1065.525	Engine dynamometer test run.
1065.530	Test cycle validation criteria.

Subpart G—Data Analysis and Calculations

1065.601	Overview.
1065.605	Required records.
1065.610	Bag sample analysis.
1065.615	Bag sample calculations.

Subpart H—Particulate Measurements [Reserved]

Subpart I—Testing With Oxygenated Fuels [Reserved]

Subpart J—Field Testing

1065.901	Applicability.
1065.905	General provisions.
1065.910	Measurement accuracy and precision.
1065.915	Equipment specifications for SI engines.

- 1065.920 Equipment setup and test run for SI engines.
- 1065.925 Calculations.
- 1065.930 Specifications for mass air flow sensors.
- 1065.935 Specifications for THC analyzers.
- 1065.940 Specifications for NO_x and air/fuel sensors.
- 1065.945 Specifications for CO analyzers.
- 1065.950 Specifications for speed and torque measurement.

Subpart K—Definitions and Other Reference Information

- 1065.1000 Definitions.
- 1065.1005 Symbols, acronyms, and abbreviations.
- 1065.1010 Reference materials.
- 1065.1015 Confidential information.

Authority: 42 U.S.C. 7401-7671(q).

Subpart A—Applicability and General Provisions

§ 1065.1 Applicability.

(a) This part describes the procedures that apply to testing that we require for the following engines or for equipment using the following engines:

- (1) Large nonroad spark-ignition engines we regulate under 40 CFR part 1048.
- (2) Snowmobiles, all-terrain vehicles, and off-highway motorcycles we regulate under 40 CFR part 1051.
- (b) This part does not apply to any of the following engine or vehicle categories:
 - (1) Light-duty highway vehicles (see 40 CFR part 86).
 - (2) Heavy-duty highway Otto-cycle engines (see 40 CFR part 86).
 - (3) Heavy-duty highway diesel engines (see 40 CFR part 86).
 - (4) Aircraft engines (see 40 CFR part 87).
 - (5) Locomotive engines (see 40 CFR part 92).
 - (6) Land-based nonroad diesel engines (see 40 CFR part 89).
 - (7) General marine engines (see 40 CFR parts 89 and 94).
 - (8) Marine outboard and personal watercraft engines (see 40 CFR part 91).
 - (9) Small nonroad spark-ignition engines (see 40 CFR part 90).

(c) This part is addressed to you as an engine manufacturer, but it applies equally to anyone who does testing for you, and to us when we conduct testing to determine if you comply with the applicable emission standards.

(d) Follow the provisions of the standard-setting part if they are different than any of the provisions in this part.

(e) For equipment subject to this part and regulated under equipment-based standards, interpret the term "engine" in this part to include equipment (see 40 CFR 1068.25).

§ 1065.5 Overview of test procedures.

(a) Some of the provisions of this part do not apply to all types of engines. For example, measurement of particulate matter is not generally required for spark-ignition engines. See the standard-setting part to determine which provisions in this part may not apply. Before using the procedures in this part, you should see the standard-setting part to answer at least the following questions:

- (1) How should I warm up the test engine before measuring emissions? Do I need to measure cold-start emissions during this warm-up segment of the duty cycle?
 - (2) Do I need to measure emissions while the hot-stabilized engine operates over a transient schedule?
 - (3) Which speed and load points should I include for the steady-state segment of the duty cycle?
 - (4) Which exhaust constituents do I need to measure?
 - (5) Are there applicable emission standards that affect the limits on engine operation and ambient conditions?
 - (6) Do emission standards apply to field testing under normal operation?
 - (7) Does testing require full-flow dilute sampling? Is raw sampling acceptable? Is partial-flow dilute sampling acceptable?
 - (8) Do any unique specifications apply for test fuels?
 - (9) What maintenance steps may I plan to do before or between tests on an emission-data engine?
 - (10) Are there any unique requirements related to stabilizing emission levels on a new engine?
 - (11) Are there any unique requirements related to testing conditions, such as ambient temperatures or pressures?
- (b) The following table shows how this part divides testing specifications into subparts:

Subpart . . .	This subpart describes . . .
Subpart A	General provisions for test procedures.
Subpart B	Equipment for performing tests.
Subpart C	Fuels and analytical gases for performing the tests.
Subpart D	How to calibrate test equipment.
Subpart E	How to prepare engines for testing, including service accumulation.
Subpart F	How to do an emission test.

Subpart . . .	This subpart describes . . .
Subpart G	How to calculate emission levels from measured data.
Subpart H	How to measure particulate emissions.
Subpart I	How to measure emissions from engines fueled with an oxygenated fuel such as methanol or ethanol.
Subpart J	How to do field testing of in-use vehicles and equipment.
Subpart K	Definitions, abbreviations, and other reference information that applies to emission testing.

§ 1065.10 Other test procedures.

(a) *Your testing.* These test procedures apply for all testing that you do to show compliance with emission standards, with a few exceptions listed in this section.

(b) *Our testing.* These test procedures generally apply for testing that we do to determine if your engines comply with applicable emission standards. We may conduct other testing as allowed by the Act.

(c) *Exceptions.* You may be allowed or required to use test procedures other than those specified in this part in the following cases:

(1) The test procedures in this part are intended to produce emission measurements equivalent to those that would result from measuring emissions during in-use operation using the same engine configuration installed in a piece of equipment. If good engineering judgment indicates that use of the procedures in this part for an engine would result in measurements that are not representative of in-use operation of that engine, you must notify us. If we determine that using these procedures would result in measurements that are significantly unrepresentative and that changes to the procedures will result in more representative measurements that do not decrease the stringency of emission standards, we will specify changes to the procedures. In your notification to us, you should recommend specific changes you think are necessary.

(2) You may ask to use emission data collected using other test procedures, such as those of the California Air Resources Board or the International Organization for Standardization. We will allow this only if you show us that these data are equivalent to data collected using our test procedures.

(3) You may ask to use alternate procedures that produce measurements equivalent to those obtained using the specified procedures. In this case, send us a written request showing that your alternate procedures are equivalent to the test procedures of this part. If you prove to us that the procedures are equivalent, we will allow you to use them. You may not use alternate procedures until we approve them. (Note: We may issue broad approval to all manufacturers for a specific change in the test procedures that allows you to use the alternate procedure without additional approval.)

(4) You may ask to use special test procedures if your engine cannot be tested using the specified test procedures (for example, it is incapable of operating on the specified transient cycle). In this case, send us a written request showing that you cannot satisfactorily test your engines using the test procedures of this part. We will allow you to use special test procedures if we determine that they would produce emission measurements that are representative of those that would result from measuring emissions during in-use operation. You may not use special procedures until we approve them.

(5) Other parts in this chapter (i.e., the parts that define emission standards for your engines) may contain other specifications for test procedures that apply for your engines. In cases where it is not possible to comply with both the test procedures in those parts and the test procedures in this part, you must comply with the test procedures specified in the standard-setting part. Those other parts may also allow you to deviate from the test procedures of this part for other reasons.

§ 1065.15 Engine testing.

(a) This part describes the procedures for performing exhaust emission tests on engines that must meet emission standards.

(b) Testing generally consists of engine operation on a laboratory dynamometer over a prescribed sequence. (Subpart J of this part contains provisions for in-use testing of engines installed in vehicles or equipment.) You need to sample and analyze the exhaust gases generated during engine operation to determine the concentration of the regulated pollutants.

(c) Concentrations are converted into units of grams of pollutant per kilowatt-hour (g/kW-hr) for comparison with the emission standards that apply.

§ 1065.20 Limits for test conditions.

(a) Unless specified elsewhere in this chapter, you may conduct tests to determine compliance with duty-cycle emission standards at ambient temperatures from 20° C (68° F) to 30° C (86° F), ambient pressures from 600 mm Hg to 775 mm Hg, and at any ambient humidity level.

(b) Testing conducted to determine compliance with not-to-exceed standards may be conducted at ambient conditions specified in the standard-setting part.

(c) For laboratory engine testing, you may heat and/or dehumidify the dilution air before it enters the CVS.

(d) For laboratory engine testing, if the barometric pressure observed during the generation of the maximum torque curve changes by more than 25 mm Hg from the value measured at the beginning of the map, you must remap the engine. To have a valid test, the average barometric pressure observed

during the exhaust emission test must be within 25 mm Hg of the average observed during the maximum torque curve generation.

Subpart B—Equipment and Analyzers

§ 1065.101 Overview. [Reserved]

§ 1065.105 Dynamometer and engine equipment specifications.

(a) The engine dynamometer system must be capable of controlling engine torque and rpm simultaneously over the applicable test cycle(s). The system should be capable of following the torque and rpm schedules within the accuracy requirements specified in § 1065.530; dynamometers that are not capable of meeting the accuracy requirements specified in § 1065.530 may be used only with advance approval. For transient testing, engine torque and rpm command set points must be issued at 5 Hz or greater (10 Hz recommended) during the tests. Feedback engine torque and rpm must be recorded at least once every second during the test. In addition to these general requirements, for all testing, the engine or dynamometer readout signals for speed and torque must meet the following accuracy specifications:

(1) Engine speed readout must be accurate to within ±2 percent of the absolute standard value. A 60-tooth (or greater) wheel in combination with a common mode rejection frequency counter is considered an absolute standard for engine or dynamometer speed.

(2) Engine flywheel torque readout must be accurate to either within ±3 percent of the NIST true value torque (as defined in § 1065.305), or the following accuracies:

If the full-scale torque value is . . .	Engine flywheel torque readout must be within . . .
T ≤ 550 ft-lbs	±2.5 ft-lbs of NIST true value.
550 < T ≤ 1050 ft-lbs	±5.0 ft-lbs of NIST true value.
T > 1050 ft-lbs	±10.0 ft-lbs of NIST true value.

(3) Option: You may use internal dynamometer signals (i.e., armature current, etc.) for torque measurement, as long as you can show that the engine flywheel torque during the test cycle conforms to the accuracy specifications in paragraph (b)(2) of this section. Your measurement system must include compensation for increased or decreased flywheel torque due to the armature inertia during accelerations and decelerations in the test cycle.

(b) To verify that the test engine has followed the test cycle correctly, you must collect the dynamometer or engine readout signals for speed and torque in a manner that allows a statistical correlation between the actual engine performance and the test cycle (see § 1065.530). Normally this collection process would involve conversion of analog dynamometer or engine signals into digital values for storage in a computer. You must perform the

conversion of dynamometer or engine values (computer or other) that are used to evaluate the validity of engine performance in relation to the test cycle while meeting the following criteria:

(1) Speed values used for cycle evaluation are accurate to within 2 percent of the dynamometer or engine speed readout value.

(2) Engine flywheel torque values used for cycle evaluation are accurate to

within 2 percent of the dynamometer or engine flywheel torque readout value.

(c) Option: For some systems it may be more convenient to combine the tolerances in paragraphs (a) and (b) of this section. You may do this if you use the root mean square method (RMS). The RMS values would then refer to accuracy in relationship to absolute standard or to NIST true values.

(1) Speed values used for cycle evaluation must be accurate to within ± 2.8 percent of the absolute standard values, as defined in paragraph (a)(1) of this section.

(2) Engine flywheel torque values used for cycle evaluation must be accurate to within ± 3.6 percent of NIST true values, as determined in § 1065.305.

§ 1065.110 Exhaust gas sampling system; spark-ignition (SI) engines.

(a) *General.* The exhaust gas sampling system described in this section is designed to measure the true mass of gaseous emissions in the exhaust of SI engines. Additional requirements apply for engines that use oxygenated fuels. In the CVS concept of measuring mass emissions, you must measure the total volume of the mixture of exhaust and dilution air and collect a continuously proportioned volume of sample for analysis. Determine the mass emissions from the sample concentration and total flow over the test period.

(b) *Critical flow venturi.* The operation of the Critical Flow Venturi Constant-Volume Sampler (CFV-CVS) (see Figure B110-1) is based upon the principles of fluid dynamics associated with critical flow. The CFV system is commonly called a constant-volume system (CVS) even though the flow varies. It would be more proper to call the critical flow venturi (CFV) system a constant-proportion sampling system, since proportional sampling throughout temperature excursions is maintained by use of a small CFV in the sample lines. The variable mixture flow rate is maintained at choked flow, which is inversely proportional to the square root of the gas temperature, and is computed continuously. Since the pressure and temperature are the same at all venturi inlets, the sample volume is proportional to the total volume.

(c) *Configuration variations.* Since various configurations can produce equivalent results, you need not conform exactly to the drawings in this subpart. You may use additional components such as instruments, valves, solenoids, pumps and switches to provide additional information and coordinate the functions of the component systems. You may exclude

other components such as snubbers, which are not needed to maintain accuracy on some systems, if you exclude them based upon good engineering judgment.

(d) *CFV component description.* The CFV sample system shown in Figure B110-1 consists of a dilution air filter (optional) and mixing assembly, cyclone particulate separator (optional), unheated sampling venturiers for the bag sample, critical flow venturi, and associated valves, pressure and temperature sensors. With the exception of the hydrocarbon sampling system for two-stroke engines, the temperature of the sample lines must be more than 3° C above the maximum dew point of the mixture and less than 121° C; it is recommended that you maintain them at $113 \pm 8^{\circ}$ C. For the hydrocarbon sampling system with two-stroke engines, the temperature of the sample lines must be more than 3° C above the maximum dew point of the mixture (water and/or HC) and less than 200° C; it is recommended that you maintain them at $190 \pm 8^{\circ}$ C. The CFV sample system must conform to the following requirements:

(1) Do not artificially lower exhaust system backpressure by the CVS or dilution air inlet system. Make the measurements to verify this in the raw exhaust immediately upstream of the inlet to the CVS. This verification requires the continuous measurement and comparison of raw exhaust static pressure observed during a transient cycle, both with and without the operating CVS. Static pressure measured with the operating CVS system must remain within ± 5 inches of water (1.2 kPa) of the static pressure measured without connection to the CVS, at identical moments in the test cycle. (We will use sampling systems capable of maintaining the static pressure to within ± 1 inch of water (0.25 kPa) if a written request shows that this closer tolerance is necessary.) This requirement serves as a design specification for the CVS/dilution air inlet system, and should be performed as often as good engineering practice dictates (for example, after installation of an uncharacterized CVS, addition of an unknown inlet restriction on the dilution air, etc.).

(2) The temperature measuring system (sensors and readout) must have an accuracy and precision of $\pm 3.4^{\circ}$ F ($\pm 1.9^{\circ}$ C). The temperature measuring system used in a CVS without a heat exchanger must have a response time of 1.50 seconds to 62.5 percent of a temperature change (as measured in hot silicone oil). There is no response time requirement for a CVS equipped with a heat exchanger.

(3) The pressure measuring system (sensors and readout) must have an accuracy and precision of ± 3 mm Hg (0.4 kPa).

(4) The flow capacity of the CVS must be large enough to eliminate water condensation in the system. You may dehumidify the dilution air before it enters the CVS. Heating is also allowed under the following conditions:

(i) The air (or air plus exhaust gas) temperature does not exceed 250° F (121° C).

(ii) Calculation of the CVS flow rate necessary to prevent water condensation is based on the lowest temperature encountered in the CVS prior to sampling. (It is recommended that the CVS system be insulated when heated dilution air is used.)

(iii) The dilution ratio is sufficiently high to prevent condensation in bag samples as they cool to room temperature.

(5) Sample collection bags for dilution air and exhaust samples must be big enough to allow unimpeded sample flow.

(e) *EFC-CFV component description.* The EFC-CFV sample system is identical to the CFV system described in paragraph (b) of this section, with the addition of electronic flow controllers, metering valves, and separate flow meters to totalize sample flow volumes (optional). The EFC sample system must conform to the following requirements:

(1) All of the requirements of paragraph (b) of this section.

(2) The ratio of sample flow to CVS flow must not vary by more ± 5 percent from the setpoint of the test.

(3) The sample flow totalizers must meet the accuracy specifications of § 1065.145. You may obtain total sample flow volumes from the flow controllers, with advance approval from us, as long as you can show that they meet the accuracy specifications of § 1065.145.

(f) *Component description, PDP-CFV.* The PDP-CFV sample system is identical to the CFV system described in paragraph (b) of this section with the following changes and additional requirements:

(1) A heat exchanger is required.

(2) You must use positive displacement pumps for the CVS flow and for the sampling system flows.

(3) The gas mixture temperature, measured at a point immediately ahead of the positive displacement pump and after the heat exchanger, must be maintained within $\pm 10^{\circ}$ F ($\pm 5.6^{\circ}$ C) of the average operating temperature observed during the test. (The average operating temperature may be estimated from the average operating temperature from similar tests.) The temperature

measuring system (sensors and readout) must have an accuracy and precision of $\pm 3.4^\circ\text{F}$ (1.9°C). There is no response time requirement for a CVS equipped with a heat exchanger.

§ 1065.115 Exhaust gas sampling system; compression-ignition (CI) engines. [Reserved]

§ 1065.120 Analyzers (overview/general response characteristics).

(a) *General.* The specifications for analyzers and analytical equipment are described in the following sections and subparts:

(1) The analyzers for measuring hydrocarbon, NO_x , CO, and CO_2 emission concentrations are specified in § 1065.125 through § 1065.135 of this chapter.

(2) The analytical equipment for measuring particulate emissions is specified in Subpart H of this part.

(3) The analytical equipment for measuring emissions of oxygenated compounds (for example, methanol) is specified in Subpart I of this part.

(4) The analytical equipment for measuring in-use emissions is specified in Subpart J of this part.

(b) *Response time.* Analyzers must have the following response characteristics:

(1) For steady-state testing and transient testing with bag sample analysis, the analyzer must reach at least 90 percent of its final response within 5.0 seconds after any step change to the input concentration greater than or equal to 80 percent of full scale.

(2) For transient testing with continuous measurement, the analyzer must reach at least 90 percent of its final response within 1.0 second after any step change to the input concentration greater than or equal to 80 percent of full scale.

(c) *Precision and noise.* (1) The precision of the analyzers must be no worse than ± 1 percent of full-scale concentration for each range used above 155 ppm (or ppmC), or ± 2 percent for each range used below 155 ppm (or ppmC). For the purpose of this paragraph, precision is defined as 2.5 times the standard deviation(s) of 10 repetitive responses to a given calibration or span gas.

(2) 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.

(d) *Drift.* (1) 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.

(2) 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.

(e) *Calibration.* Calibration procedures for analyzers are specified in subpart D of this part.

§ 1065.125 Hydrocarbon analyzers.

This section describes the requirements for flame ionization detectors (FIDs).

(a) Fuel the FID with a mixture of hydrogen in helium, and calibrate it using propane.

(b) You do not need to heat the FID for four-stroke SI engines. Heated FIDs are required for two-stroke SI engines. If you use a heated FID, you must keep the temperature below 200°C .

(c) An overflow sampling system is required for heated continuous FIDs. (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.)

(d) Premixing the FID fuel and burner air is not allowed.

(e) The FID must meet the applicable accuracy and precision specifications of ISO 8178, which is incorporated by reference (see § 1065.1010).

§ 1065.130 NO_x analyzers.

This section describes the requirements for chemiluminescent detectors (CLD).

(a) The CLD must meet the applicable accuracy and precision specifications of ISO 8178, which is incorporated by reference (see § 1065.1010).

(b) The NO to NO_2 converter must have an efficiency of at least 90 percent.

(c) Heated CLDs are not required for SI engine testing.

(d) An overflow sampling system is required for continuous CLDs. (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.)

§ 1065.135 CO and CO_2 analyzers.

This section describes the requirements for non-dispersive infrared absorption detectors (NDIR).

(a) The NDIR must meet the applicable accuracy and precision specifications of ISO 8178, which is incorporated by reference (see § 1065.1010).

(b) The NDIR must meet the applicable quench and interference

requirements of ISO 8178, which is incorporated by reference (see § 1065.1010).

§ 1065.140 Smoke meters. [Reserved]

§ 1065.145 Flow meters.

(a) Flow meters must have accuracy and precision of ± 2 percent of point or better, and be traceable to NIST standards.

(b) Flow measurements may be corrected for temperature and/or pressure, provided the temperature and pressure measurements have accuracy and precision of ± 2 percent of point or better (absolute).

Subpart C—Test Fuels and Analytical Gases

§ 1065.201 General requirements for test fuels.

(a) For all emission tests, use test fuels meeting the specifications in this subpart, unless the standard-setting part gives other directions. For any service accumulation on a test engine, if we do not specify a fuel, use the specified test fuel or a fuel typical of what you would expect the engine to use in service.

(b) We may require you to test the engine with each type of fuel it can use (for example, gasoline and natural gas).

(c) If you will produce engines that can run on a type of fuel (or mixture of fuels) we do not specify in this subpart, we will allow you to do testing with fuel that represents commercially available fuels of that type. However, we must approve your fuel's specifications before you may use it for emission testing.

(d) You may use a test fuel other than those we specify in this subpart if you do all of the following:

(1) Show that it is commercially available.

(2) Show that your engines will use only the designated fuel in service.

(3) Show that operating the engines on the fuel we specify would increase emissions or decrease durability.

(4) Get our written approval before you start testing.

(e) The test fuel specifications rely on standards established by the American Society for Testing and Methods, which have been incorporated by reference in § 1065.1010.

§ 1065.205 Test fuel specifications for distillate diesel fuel. [Reserved]

§ 1065.210 Test fuel specifications for gasoline.

Gasoline test fuel must meet the specifications in Table 1 of § 1065.210, as follows:

TABLE 1 OF § 1065.210.—GASOLINE TEST FUEL SPECIFICATIONS

Item	Procedure	Value
Distillation Range:		
1. Initial boiling point, °C	ASTM D 86-97	23.9-35.0 ²
2. 10% point, °C	ASTM D 86-97	48.9-57.2
3. 50% point, °C	ASTM D 86-97	93.3-110.0
4. 90% point, °C	ASTM D 86-97	148.9-162.8
5. End point, °C	ASTM D 86-97	212.8
Hydrocarbon composition:		
1. Olefins, volume %	ASTM D 1319-98	10 maximum.
2. Aromatics, volume %	ASTM D 1319-98	35 minimum.
3. Saturates	ASTM D 1319-98	Remainder.
Lead (organic), g/liter	ASTM D 3237	0.013 maximum.
Phosphorous, g/liter	ASTM D 3231	0.005 maximum.
Sulfur, weight %	ASTM D 1266	0.08 maximum.
Volatility (Reid Vapor Pressure), kPa	ASTM D 3231	60.0 to 63.4 ^{1 2}

¹ For testing unrelated to evaporative emissions, the specified range is 55.2 to 63.4 kPa.

² For testing at altitudes above 1219 m, the specified volatility range is 52 to 55 kPa and the specified initial boiling point range is 23.9° to 40.6° C.

§ 1065.215 Test fuel specifications for natural gas.

(a) Natural gas test fuel must meet the specifications in Table 1 of § 1065.215, as follows:

TABLE 1 OF § 1065.215.—NATURAL GAS TEST FUEL SPECIFICATIONS

Item	Procedure	Value (mole percent)
1. Methane	ASTM D 1945	89.0 minimum.
2. Ethane	ASTM D 1945	4.5 maximum.
3. C3 and higher	ASTM D 1945	2.3 maximum.
4. C6 and higher	ASTM D 1945	0.2 maximum.
5. Oxygen	ASTM D 1945	0.6 maximum.
6. Inert gases (sum of CO ₂ and N ₂)	ASTM D 1945	4.0 maximum.

(b) At ambient conditions, the fuel must have a distinctive odor detectable down to a concentration in air of not over one-fifth of the lower flammability limit.

§ 1065.220 Test fuel specifications for liquefied petroleum gas.

(a) Liquefied petroleum gas test fuel must meet the specifications in Table 1 of § 1065.220, as follows:

TABLE 1 OF § 1065.220.—LIQUEFIED PETROLEUM GAS TEST FUEL SPECIFICATIONS

Item	Procedure	Value
1. Propane	ASTM D 2163	85.0 vol. percent minimum.
2. Vapor pressure at 38° C	ASTM D 1267 or 2598 ¹	14 bar maximum.
3. Volatility residue (evaporated temp., 35° C)	ASTM D 1837	-38° C maximum.
4. Butanes	ASTM D 2163	5.0 vol. percent maximum.
5. Butenes	ASTM D 2163	2.0 vol. percent maximum.
6. Pentenes and heavier	ASTM D 2163	0.5 vol. percent maximum.

TABLE 1 OF § 1065.220.—LIQUEFIED PETROLEUM GAS TEST FUEL SPECIFICATIONS—Continued

Item	Procedure	Value
7. Propene	ASTM D 2163	10.0 vol. percent maximum.
8. Residual matter (residue on evap. of 100 ml oil stain observ.)	ASTM D 2158	0.05 ml maximum pass. ²
9. Corrosion, copper strip	ASTM D 1838	No. 1 maximum.
10. Sulfur	ASTM D 2784	80 ppm maximum.
11. Moisture content	ASTM D 2713	Pass.

¹ If these two test methods yield different results, use the results from ASTM D-1267.

² The test fuel must not yield a persistent oil ring when 0.3 ml of solvent residue mixture is added to a filter paper, in 0.1 ml increments and examined in daylight after 2 minutes (see ASTM D-2158).

(b) At ambient conditions, the fuel must have a distinctive odor detectable down to a concentration in air of not over one-fifth of the lower flammability limit.

§ 1065.240 Lubricating oils.

Lubricating oils that you use to comply with this part must be

commercially available and representative of the oil that will be used with your in-use engines.

§ 1065.250 Analytical gases.

Analytical gases that you use to comply with this part must meet the accuracy and purity specifications of this section. You must record the

expiration date specified by the gas supplier and may not use any gas after the expiration date.

(a) *Pure gases.* Use the "pure gases" in Table 1 of § 1065.250, as follows:

TABLE 1 OF § 1065.250—PURE GAS CONCENTRATIONS

Gas type	Maximum contaminant concentrations				Oxygen content
	Organic carbon	Carbon monoxide	Carbon dioxide	Nitric oxide (NO)	
Purified Nitrogen	1 ppmC	1 ppm	400 ppm ..	0.1 ppm ...	NA
Purified Oxygen	NA	NA	NA	NA	99.5–100.0%
Purified Synthetic Air, or Zero-Grade Air	1 ppmC	1 ppm	400 ppm ..	0.1 ppm ...	18–21%

(b) *FID Fuel.* For the flame ionization detector, use a hydrogen-helium mixture as the fuel. The mixture must contain 40 ± 2 percent hydrogen, and may contain no more than 1 ppmC of organic carbon or 400 ppm of CO₂.

(c) *Calibration and span gases.* The following provisions apply to calibration and span gases:

(1) Use the following gas mixtures for calibrating and spanning your analytical instruments:

- (i) Propane in purified synthetic air;
- (ii) CO in purified nitrogen;
- (iii) NO and NO₂ in purified nitrogen (the amount of NO₂ contained in this calibration gas must not exceed 5 percent of the NO content);
- (iv) Oxygen in purified nitrogen;
- (v) CO₂ in purified nitrogen;
- (vi) Methane in purified synthetic air.

(2) The calibration gases in paragraph (c)(1) of this section must be traceable to within one percent of NIST gas standards, or other gas standards we have approved. Span gases in paragraph (c)(1) of this section must be accurate to within two percent of true concentration, where true concentration

refers to NIST gas standards, or other gas standards we have approved. All concentrations of calibration gas shall be given on a volume basis (volume percent or volume ppm).

(3) You may use gases for species other than those listed in paragraph (c)(1) of this section (such as methanol in air gases used for response factor determination), as long as they meet the following criteria:

- (i) They are traceable to within ± 2 percent of NIST gas standards, or other standards we have approved.
- (ii) They remain within ± 2 percent of the labeled concentration. Demonstrate this by using a quarterly measurement procedure with a precision of ± 2 percent (two standard deviations), or other method that we approve. Your measurement procedure may incorporate multiple measurements. If the true concentration of the gas changes by more than two percent, but less than ten percent, you may relabel the gas with the new concentration.

(4) You may generate calibration and span gases using precision blending devices (gas dividers) to dilute gases

with purified nitrogen or with purified synthetic air. The accuracy of the mixing device must be such that the concentration of the blended calibration gases is accurate to within ± 1.5 percent. This accuracy implies that primary gases used for blending must be known to an accuracy of at least ± 1 percent, traceable to NIST gas standards, or other gas standards we have approved. For each calibration incorporating a blending device, verify the blending accuracy between 15 and 50 percent of full scale. You may optionally check the blending device with an instrument that is linear by nature (for example, using NO gas with a CLD). Adjust the span value of the instrument with the span gas directly connected to the instrument. Check the blending device at the used settings to ensure that the difference between nominal values and measured concentrations at each point stays within ± 0.5 percent of the nominal value.

(d) *Oxygen interference gases.* Oxygen interference check gases are mixtures of oxygen, nitrogen, and propane. The

oxygen concentration must be between 20 and 22 percent, and the propane concentration must be between 50 and 90 percent of the maximum value in the most typically used FID range. Independently measure the concentration of total hydrocarbons plus impurities by chromatographic analysis or by dynamic blending.

Subpart D—Analyzer and Equipment Calibrations

§ 1065.301 Overview.

Calibrate all analyzers and equipment at least annually. The actual frequency must be consistent with good engineering judgment. We may establish other guidelines as appropriate. Perform the calibrations according to the specifications of one of the following sources:

(a) The recommendations of the manufacturer of the analyzers or equipment.

(b) 40 CFR part 86, subpart N.

§ 1065.305 Torque calibration.

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.

(a) 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:

(1) *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. 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.

(2) *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.

(b) 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:

(1) A master load cell shall be either precalibrated or be calibrated per paragraph (a)(1) of this section with known weights traceable to NIST, and used with the lever arm(s) specified in paragraph (b)(2) of this section. The dynamometer should be either running or vibrated during this calibration to minimize static hysteresis.

(2) A lever arm(s) with a minimum length of 24 inches is (are) required. The horizontal distances from the centerline of the master load cell, to the centerline of the dynamometer, and to the point of weight or force application shall be accurate to within ± 0.10 inches. The arm(s) must be balanced or the net hanging torque of the arm(s) must be known to within ± 0.1 ft.-lbs.

(3) 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 § 1065.105(a)(2) for the flywheel torque measurement device readout be met or exceeded.

Subpart E—Engine Preparation and Service Accumulation

§ 1065.405 Preparing and servicing a test engine.

(a) If you are testing an emission-data engine for certification, make sure you have built it to represent production engines.

(b) Run the test engine, with all emission-control systems operating, long enough to stabilize emission levels. If you accumulate 50 hours of operation, you may consider emission levels stable without measurement.

(c) Do not service the test engine before you stabilize emission levels, unless we approve other maintenance in advance. This prohibition does not apply with respect to your

recommended oil and filter changes for newly produced engines.

(d) Select engine operation for accumulating operating hours on your test engines to represent normal in-use engine operation for the engine family.

(e) If you need more than 50 hours to stabilize emission levels, record your reasons and the method you use to do this. Give us these records if we ask for them.

§ 1065.410 Service limits for stabilized test engines.

(a) After you stabilize the test engine's emission levels, you may do scheduled maintenance, other than during emission testing, as specified in the standard-setting part.

(b) You may not do any unscheduled maintenance to the test engine or its emission-control system or fuel system without our advance approval. Unscheduled maintenance includes any adjustment, repair, removal, disassembly, cleaning, or replacement of the test engine.

(1) We may approve unscheduled maintenance if all of the following occur:

(i) You determine that a part failure or system malfunction (or the associated repair) does not make the engine unrepresentative of production engines in the field and does not require anyone to access the combustion chamber.

(ii) Something clearly malfunctions (such as persistent misfire, engine stall, overheating, fluid leakage, or loss of oil pressure) and needs maintenance or repair.

(iii) You give us a chance to verify the extent of the malfunction through audible or visual signals before you do the maintenance.

(2) If we determine that a part's failure or a system's malfunction (or the associated repair) has made the engine unrepresentative of production engines, you may no longer use it as a test engine.

(3) You may not do unscheduled maintenance based on emission measurements from the test engine.

(4) Unless we approve beforehand, you may use equipment, instruments, or tools to identify bad engine components only if you specify they should be used for scheduled maintenance on production engines. In this case, you must also make them available at dealerships and other service outlets.

(c) If you do maintenance that might affect emissions, you must completely test systems for emissions before and after the maintenance unless we waive this requirement.

(d) If your test engine has a major mechanical failure that requires you to

take the engine apart, you may no longer use it as a test engine.

§ 1065.420 Durability demonstration.

Where durability testing is required by the standard-setting part, you must perform the service accumulation in a manner representative of the manner in which the engine is expected to be operated in use. However, you may accumulate service hours using an accelerated schedule (e.g., using continuous operation). The following specifications also apply:

(a) *Maintenance.* (1) You may perform scheduled maintenance that you recommend to operators, but only if it is consistent with any applicable allowable maintenance restrictions of the standard-setting part.

(2) You may performed additional maintenance only if we approve it in advance, as specified in § 1065.410(b).

(3) If your test engine has a major mechanical failure that requires you to take the engine apart, you may no longer use it as a test engine.

(b) *Emission measurements.* (1) Emission testing to determine deterioration factors must be consistent with good engineering judgment and must be spaced evenly throughout the durability period.

(2) Emission tests must be performed according to the provisions of this part and the applicable provisions of the standard-setting part.

Subpart F—Running an Emission Test

§ 1065.500 Overview of the engine dynamometer test procedures.

(a) The engine dynamometer test procedure measures the brake-specific emissions of hydrocarbons (total and nonmethane, as applicable), carbon monoxide, and oxides of nitrogen. To perform this test procedure, you first dilute exhaust emissions with ambient air and collect a continuous proportional sample for analysis, then analyze the composite samples (either in bags after the test or continuously during the test). The general test procedure consists of a test cycle made of one or more segments; check the standard-setting part for specific cycles. The segments are:

(1) Either a cold-start cycle (where emissions are measured) or a warm-up cycle (where emissions are not measured).

(2) A hot-start transient test (some test cycles may omit engine starting from the "hot-start" cycle).

(3) A steady-state test.

(b) Power is measured using the torque and rpm feedback signals from the dynamometer. This produces a

brake kilowatt-hour value that leads to a calculation of brake-specific emissions (see Subpart G of this part).

(c) Prepare engines for testing according to the following provisions:

(1) When you test an engine or operate it for service accumulation, you need to use the complete engine, with all emission-control devices installed and functioning.

(2) For air-cooled engines, the fan must be installed.

(3) You may install additional accessories (for example, oil cooler, alternators, air compressors, etc.) or simulate their loading if they are typical of in-use operation. This loading must be applied during all testing operations, including mapping.

(4) The engine may be equipped with a production-type starter.

(5) Cool the engine in a way that will maintain the engine operating temperatures (for example, temperatures of intake air, oil, water, etc.) at approximately the same temperatures as would occur during normal operation. You may use auxiliary fans to maintain engine cooling during operation on the dynamometer. You may use rust inhibitors and lubrication additives, up to the levels recommended by the additive manufacturer. You may also use antifreeze mixtures and other coolants typical of those approved for use by the manufacturer.

(6) Use representative exhaust systems and air intake systems. Make sure that the exhaust restriction is between 80 and 100 percent of the recommended maximum specified exhaust restriction, and that the air inlet restriction is between that of a clean filter and the maximum restriction specification. The manufacturer is liable for emission compliance from the minimum in-use restrictions to the maximum restrictions specified by the manufacturer for that particular engine.

§ 1065.510 Engine mapping procedures.

(a) *Power map.* Perform an engine power map with the engine mounted on the dynamometer. Use the torque curve resulting from the mapping to convert the normalized torque values in the engine cycle to actual torque values for the test cycle. The minimum speed range is from the warm no-load idle speed to 105 percent of the maximum test speed. Since, the maximum test speed is determined from the power map, it may be necessary to perform a preliminary power map to determine the full mapping range. You may perform a preliminary power map during engine warmup. To map the engine, do the following things in sequence:

(1) Warm up the engine so oil and water temperatures vary by less than 2 percent for 2 minutes.

(2) Operate the engine at the warm no-load idle speed.

(3) Fully open the throttle.

(4) While maintaining wide-open throttle and full-load, maintain minimum engine speed for at least 15 seconds. Record the average torque during the last 5 seconds.

(5) In 100±20 rpm increments, determine the maximum torque curve for the full speed range. Hold each test point for 15 seconds, and record the average torque over the last 5 seconds.

(6) Fit all data points recorded with a cubic spline, Akima, or other technique we approve in advance. The resultant curve must be accurate to within ±1.0 ft-lbs of all recorded engine torques.

(b) *Power map with continual rpm sweep.* In place of paragraphs (a)(1) through (a)(4) of this section, you may do a continual sweep of rpm. While operating at wide-open throttle, increase the engine speed at an average rate of 8±1 rpm/sec over the full speed range. Record speed and torque points at a rate of at least one point per second. Connect all points generated under this approach by linear interpolation.

(c) *Alternate mapping.* If you believe the above mapping techniques are unsafe or unrepresentative for any given engine or engine family, you may use alternate mapping techniques. These alternate techniques must satisfy the intent of the specified mapping procedures to determine the maximum available torque at all engine speeds that occur during the test cycles. Report deviations from the mapping techniques specified in this section for reasons of safety or representativeness. In no case, however, may you use descending continual sweeps of rpm for governed or turbocharged engines.

(d) *Replicate tests.* You need not map an engine before each and every test. Remap an engine before a test in any of the following situations:

(1) An unreasonable amount of time has passed since the last map, as determined by good engineering judgment.

(2) The barometric pressure prior to the start of the cold-cycle test has changed more than 1 in. Hg from the average barometric pressure observed during the map.

(3) The engine has undergone physical changes or recalibration that might affect engine performance.

§ 1065.515 Transient test cycle generation.

(a) *Denormalized test cycles.* The applicable test cycles are contained in the standard-setting parts. These cycles

are comprised of second-by-second specifications for torque and speed. Both torque and speed are normalized in these cycles.

(1) Torque is normalized to the maximum torque at the speed listed with it. Therefore, to denormalize the torque values in the cycle, use the maximum torque curve for the engine in question. The generation of the maximum torque curve is described in § 1065.510.

(2) To denormalize speed, use the following equation:

$$\text{Actual rpm} = (0.01)(\% \text{rpm})(\text{Maximum test speed} - \text{warm idle speed}) + \text{warm idle speed}.$$

(3) Paragraph (d) of this section describes the method of calculating maximum test speed.

(b) *Example of the denormalization procedure.* For an engine with maximum test speed of 3800 rpm and warm idle speed of 600 rpm, denormalize the following test point: percent rpm = 43, percent torque = 82.

(1) Calculate actual rpm. Use the following equation:

$$\text{Actual rpm} = (0.01)(43)(3800 - 600) + 600 = 1976.$$

(2) Determine actual torque.

Determine the maximum observed torque at 1976 rpm from the maximum torque curve. Then multiply this value (for example, 358 ft-lbs) by 0.82. This results in an actual torque of 294 ft-lbs.

(c) *Cold-start enhancement devices.* Proper operation of the engine's automatic cold-start enhancement device supersedes the zero-percent speed specified in the test cycles.

(d) *Maximum test speed.* Maximum test speed is used for all the emission testing we require. It occurs on the lug curve at the point farthest from the origin on a plot of power vs. speed. To find this speed, follow these steps:

(1) *Generate the lug curve.* Before testing an engine for emissions, generate data points for maximum measured brake power with varying engine speed (see § 1065.510). These data points form the lug curve.

(2) *Normalize the lug curve.* To normalize the lug curve, do three things:

(i) Identify the point (power and speed) on the lug curve where maximum power occurs.

(ii) Normalize the power values of the lug curve—divide them by the maximum power and multiply the resulting values by 100.

(iii) Normalize the engine speed values of the lug curve—divide them by the speed at which maximum power occurs and multiply the resulting values by 100.

(3) *Determine maximum test speed.* Calculate the maximum test speed from the following speed-factor analysis:

(i) For a given power-speed point, the speed factor is the normalized distance to the power-speed point from the zero-power, zero-speed point. Compute the speed factor's value:

$$\text{Speed factor} = \sqrt{(\text{power})^2 + (\text{speed})^2}$$

(ii) Determine the maximum value of speed factors for all the power-speed data points on the lug curve. Maximum test speed is the speed at which the speed factor's maximum value occurs. Note that this maximum test speed is the 100-percent speed point for normalized transient duty cycles.

(4) *Constant-speed engines.* For constant-speed engines, maximum test speed is the same as the engine's maximum in-use operating speed.

(e) *Intermediate test speed.* Determine intermediate test speed with the following provisions:

(1) If peak torque speed is between 60 to 75 percent of maximum test speed, the intermediate speed point is at that same speed.

(2) If peak torque speed is less than 60 percent of maximum test speed, the intermediate speed point is at 60 percent of maximum test speed.

(3) If peak torque speed is greater than 75 percent of maximum test speed, the intermediate speed point is at 75 percent of maximum test speed.

§ 1065.520 Engine starting, restarting, and shutdown.

Applicable test cycles may contain requirements to start or shut down the engine. This section specifies how to do that.

(a) *Engine starting.* Start the engine according to the manufacturer's recommended starting procedure in the owner's manual, using either a production starter motor or the dynamometer. The speed at which the engine is cranked (motored) with the dynamometer should be equal to the typical in-use cranking speed (nominal speed ± 10 percent) with a fully charged battery. The time the dynamometer takes to accelerate the engine to cranking speed should be equal (nominal ± 0.5 seconds) to the time required with a starter motor. Terminate motoring by the dynamometer within one second of starting the engine. The free-idle period of the cycle begins when you determine that the engine has started.

(1) If the engine does not start after 15 seconds of cranking, cease cranking and determine the reason for the failure to start. Turn off the gas flow measuring

device (or revolution counter) on the constant-volume sampler (and the hydrocarbon integrator when measuring hydrocarbons continuously) during this diagnostic period. Also, either turn off the CVS or disconnect the exhaust tube from the tailpipe during the diagnostic period. If failure to start is an operational error, reschedule the engine for testing (this may require soaking the engine if a cold-start is required for the test).

(2) If longer cranking times are necessary, you may use them instead of the 15-second limit, as long as the owner's manual and the service repair manual describe the longer cranking times as normal.

(3) If an engine malfunction causes a failure to start, you may take corrective action of less than 30 minutes duration and continue the test. Reactivate the sampling system at the same time cranking begins. When the engine starts, begin the timing sequence. If an engine malfunction causes a failure to start and the engine cannot be restarted, the test is void.

(b) *Engine stalling.* Respond to engine stalling according to the following provisions:

(1) If the engine stalls during the warm-up period, the initial idle period of test, or the steady-state segment, you may restart the engine immediately using the appropriate starting procedure and continue the test.

(2) If the engine stalls anywhere else during the test, the test is void.

(c) *Engine shutdown.* Shut the engine down according to the manufacturer's specifications.

§ 1065.525 Engine dynamometer test run.

Take the following steps for each test:

(a) Prepare the engine, dynamometer, and sampling system. Change filters or other replaceable items and leak check as necessary.

(b) If you are using bag samples, connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(c) Attach the CVS to the engine exhaust system any time prior to starting the CVS.

(d) Start the CVS (if not already started), the sample pumps, the engine cooling fan(s), and the data collection system. Preheat the heat exchanger of the constant-volume sampler (if used) and the heated components of any continuous sampling system(s) to their designated operating temperatures before the test begins.

(e) Adjust the sample flow rates to the desired flow rates and set the CVS gas flow measuring devices to zero. CFV—

CVS sample flow rate is fixed by the venturi design.

(f) Start the engine if engine starting is not part of the test cycle specified in the standard-setting part.

(g) Run the test cycle specified in the standard-setting part and collect the test data.

(h) As soon as practical after the test cycle is completed, analyze the bag samples.

§ 1065.530 Test cycle validation criteria.

(a) *Steady-state emission testing.* Engine speeds and/or loads may not deviate from the set point more than ±2 percent of point during the sampling period for a valid test.

(b) *Transient emission testing performed by EPA.* Emission tests not meeting the specifications of this paragraph (b) are not considered to be in accordance with the test cycle requirements of the standard-setting part, except where the cause of the failure to meet these specifications is determined to be related to the engine rather than the test equipment.

(1) *Shifting feedback signals.* To minimize the biasing effect of the time lag between the feedback and reference cycle values, you may advance or delay the entire engine speed and torque feedback signal sequence with respect to the reference speed and torque sequence. If the feedback signals are shifted, you must shift both speed and torque the same amount in the same direction.

(2) *Brake kilowatt-hour calculation.* Calculate the brake kilowatt-hour for each pair of engine feedback speed and torque values recorded. Also calculate the reference brake kilowatt-hour for each pair of engine speed and torque reference values. Calculations must be done to five significant figures.

(3) *Regression line analysis.* Perform regression analysis to calculate validation statistics according to the following:

(i) Perform linear regressions of feedback value on reference value for speed, torque, and brake power on 1 Hz data after the feedback shift has occurred (see paragraph (b)(1) of this section). Use the method of least

squares, with the best fit equation having the form:

$$y = mx + b$$

Where:

y = The feedback (actual) value of speed (rpm), torque (ft-lbs), or brake power.

m = Slope of the regression line.

x = The reference value (speed, torque, or brake power).

b = The y-intercept of the regression line.

(ii) Calculate the standard error of estimate (SE) of y on x and the coefficient of determination (r²) for each regression line.

(iii) For the test to be considered valid, the slope, intercept, standard error, and coefficient of determination must meet the criteria in Table 1 of § 1065.530 and the integrated brake kilowatt-hour of the feedback cycle does must be within 5 percent of the integrated brake kilowatt-hour of the reference cycle. Individual points may be deleted from the regression analyses consistent with good engineering judgment. Table 1 follows:

TABLE 1 OF § 1065.530.—STATISTICAL CRITERIA FOR TEST CYCLE VALIDATION

	Speed	Torque	Power
1. Standard error of the estimate of Y on X (SE).	100 rpm	15 percent of maximum torque from power map.	10 percent of maximum power from power map.
2. Slope of the regression line (m)	0.980 to 1.020	0.880 to 1.030	0.880 to 1.030.
3. Coefficient of determination (r ²)	r ² ≥0.970	r ² ≥0.900	r ² ≥0.900.
4. Y intercept of the regression line (b)	|b|≤40 rpm .....	|b|≤5.0 percent of maximum torque from power map.	|b|≤3.0 percent of maximum torque from power map.

(c) *Transient testing performed by manufacturers.* Emission tests meeting the specifications of paragraph (b) of this section are considered to be in accordance with the test cycle requirements of the standard-setting part. A manufacturer may choose to use a dynamometer not capable of meeting the specifications of paragraph (b) of this section.

Subpart G—Data Analysis and Calculations

§ 1065.601 Overview.

This subpart describes how to use the responses on the analyzers and other meters to calculate final gram per kilowatt-hour emission rates.

§ 1065.605 Required records.

Retain the following information for each test:

(a) Test number.

(b) System or device tested (brief description).

(c) Date and time of day for each part of the test schedule.

(d) Test results.

(e) Operator's name.

(f) Engine: ID number, manufacturer, model year, emission standards, engine family, basic engine description, fuel system, engine code, and idle rpm, as applicable.

(g) Dynamometer: Dynamometer identification, records to verify compliance with the duty cycle requirements of the test.

(h) Gas analyzers: Analyzer bench identification, analyzer ranges, recordings of analyzer output during zero, span, and sample readings.

(i) Recorder charts: Test number, date, identification, operator's name, and identification of the measurements recorded.

(j) Test cell barometric pressure, ambient temperature, and humidity as

required. (Some test systems may require continuous measurements, others may require a single measurement, or measurements before and after the test.)

(k) Temperatures: Records to verify compliance with the ambient temperature requirements throughout the test procedure.

(l) CFV—CVS: Total dilute exhaust volume (V_{mix}) for each phase of the exhaust test.

(m) PDP—CVS: Test measurements for calculating the total dilute exhaust volume (V_{mix}), and the V_{mix} for each phase of the exhaust test.

(n) The humidity of the dilution air. (Note: If you do not use conditioning columns, this measurement is not necessary. If you use conditioning columns and take the dilution air from the test cell, you may use the ambient humidity for this measurement.)

§ 1065.610 Bag sample analysis.

(a) Zero the analyzers and obtain a stable zero reading. Recheck after tests.

(b) Introduce span gases and set instrument gains. To avoid errors, span and calibrate at the same flow rates used to analyze the test sample. Span gases should have concentrations equal to 75 to 100 percent of full scale. If gain has shifted significantly on the analyzers, check the calibrations. Show actual concentrations on the chart.

(c) Check zeroes; repeat the procedure in paragraphs (a) and (b) of this section if necessary.

(d) Check flow rates and pressures.

(e) Measure HC, CO, and NO_x concentrations of samples.

(f) Check zero and span points. If the difference is greater than 2 percent of full scale, repeat the procedure in paragraphs (a) through (e) of this section.

§ 1065.615 Bag sample calculations.

(a) Calculate the dilution factor. The dilution factor is the ratio of the total volume of the raw exhaust to the total volume of the diluted exhaust. It is calculated as 134,000 divided by the sum of the diluted ppmC concentrations of carbon-containing compounds in the exhaust; that is:

$$DF = 134,000 / (CO_{2\text{sample}} + THC_{\text{sample}} + CO_{\text{sample}})$$

Where:

CO_{2sample} and CO_{sample} are expressed as ppm, and THC_{sample} is expressed as ppmC.

(b) Calculate mass emission rates (g/test) for the transient segment using the general equation in paragraph (b)(1) of this section:

(1) The general equation follows:
emission rate = (total dilute exhaust volumetric flow)(ppm)(density factor)/10⁶ M_x = (V_{mix})(C_i)(f_{di})/10⁶

Where:

M_x = Mass emission rate in g/test segment.

V_{mix} = Total dilute exhaust volumetric flow in m³ per test segment.

C_i = The concentration of species i, in ppm or ppmC, corrected for background contribution according to the equation in paragraph (b)(2) of this section.

f_{di} = The density factor for species i. The density factors are 576.8 g/m³ for THC, 1913 g/m³ for NO_x, and 1164 g/m³ for CO.

(2) The equation for calculating C_i follows:

$$C_i = C_{\text{sample}} - C_{\text{background}} [1 - (1/DF)]$$

Where:

C_{sample} = Concentration of species i in the diluted exhaust sample, in ppm or ppmC.

C_{background} = Concentration of species i in the dilution air background sample, in ppm or ppmC.

DF = Dilution factor, as calculated in paragraph (a) of this section.

(c) Calculate total brake work done during the emissions sampling period of each segment or mode.

(d) Determine the time duration of the emission sampling period.

(e) Calculate emissions in g/kW-hr by dividing the mass emission rate by the total brake work and the duration of the emission sampling period.

Subpart H—Particulate Measurements [Reserved]**Subpart I—Testing With Oxygenated Fuels [Reserved]****Subpart J—Field Testing****§ 1065.901 Applicability.**

(a) The test procedures in this subpart measure brake-specific emissions from engines while they remain installed in vehicles or equipment in the field.

(b) These test procedures apply to your engines as specified in the standard-setting part.

§ 1065.905 General provisions.

(a) Unless the standard-setting part specifies deviations from the provisions of this subpart, testing conducted under this subpart must conform to all of the provisions of this subpart.

(b) Testing conducted under this subpart may include any or all normal in-use operation of the engine.

§ 1065.910 Measurement accuracy and precision.

(a) Measurement systems used for in-use testing must be accurate to within ±5 percent compared to engine dynamometer testing conducted according to the test procedures of this part that are applicable for your engine. These systems must also have a precision of ±5 percent or better. Determine accuracy and precision of an in-use system by simultaneously measuring emissions using the engine-dynamometer test procedures of this part and the in-use system. To have a statistically valid sample, measure emissions during at least 3 tests each for at least 3 different engines. You must conduct these verification tests using the test cycle specified in the standard-setting part, unless we approve a different test cycle.

(1) A system must meet the following conditions to be considered sufficiently accurate:

(i) The correlation coefficient (r) for a least-squares linear fit that includes the origin must be 0.95 or higher.

(ii) The average ratio (for all tests) of the emission rate from the in-use system divided by the emission rate from the dynamometer procedure must be between 0.97 and 1.05.

(2) For a system to be considered sufficiently precise, the average coefficient of variance for all engines must be 5 percent or less for each pollutant. (Note: Increasing the length of the sampling period may be an effective way to improve precision.)

(b) Measurement systems that conform to the provisions of §§ 1065.915 through 1065.950 are considered to be in compliance with the accuracy and precision requirements of paragraph (a) of this section.

§ 1065.915 Equipment specifications for SI engines.

This section describes equipment you may use to measure in-use emissions. You may use other equipment and measurement systems that conform to the requirements of §§ 1065.905 and 1065.910.

(a) The primary components of the in-use measurement system are a mass air flow sensor, a portable FID, a zirconia-based NO_x sensor, a zirconia-based air/fuel ratio sensor, and a portable NDIR analyzer.

(1) The mass air flow sensor must meet the requirements of § 1065.930.

(2) The portable FID must meet the requirements of § 1065.935.

(3) The NO_x and air/fuel sensors must meet the requirements of § 1065.940.

(4) The NDIR analyzer must meet the requirements of § 1065.941.

(b) You must measure the following parameters continuously at a rate of 3 Hz or higher and store the data electronically:

(1) THC, NO_x, CO concentrations.

(2) Air/fuel ratio.

(3) Intake air flow rate.

(4) Engine speed.

(5) Parameters used to calculate torque.

(c) You must minimize sample line length for any analyzers that require a physical sample be drawn from the exhaust to the analyzer (i.e., THC and CO analyzers). You must draw these samples at a constant flow rate. In no case may you use any combination of sample line length and sample flow rate that would result in the length of time necessary for the analyzer to reach 90 percent of its final response after a step change to the input concentration at the opening of the sample probe being greater than 10 seconds. For residence time delays between 1 and 10 seconds, you must correct the measurements to be consistent with the engine speed, torque, and air intake data. You may

also correct other measurements with less than 1 second lags.

(d) The sample probes and sensors can be inserted into the exhaust pipe, or mounted in an exhaust extension that is connected to the exhaust pipe with negligible leaking. The sample probes and sensors must be located sufficiently close to the center line of the exhaust pipe to minimize boundary layer effects from the wall.

§ 1065.920 Equipment setup and test run for SI engines.

This section describes how to set up the equipment specified in § 1065.915, and how to use it to measure in-use emissions from SI engines.

(a) Inspect the vehicle or equipment to determine whether it meets any applicable requirements of the standard-setting part. This may include requirements related to model year, accumulated hours of operation, fuel specifications, maintenance history, engine temperatures, etc.

(b) Perform calibrations as specified in this subpart. In the field, this generally will require only zeroing and spanning the instruments. However, each instrument must have been fully calibrated according to the instrument manufacturer's specifications. Nonlinear calibrations generated previously from the full calibration may be used after zeroing and spanning the instruments. Spanning can be performed using a single gas bottle, consistent with good engineering practice, and provided that stability of the span mixture has been demonstrated.

(c) Connect the data recorder (with any necessary signal interpreters or converters) to the engine's electronic control module (ECM).

(d) Disconnect the air intake system as necessary to attach the mass air flow sensor. Reconnect the system after attaching the mass air flow sensor.

(e) Attach the sample extension to the exhaust outlet.

(f) Turn on instruments and allow them to warm up as necessary.

(g) Begin sampling. You do not need to begin recording the data at this point.

(h) Begin operating the vehicle or equipment in a normal manner. (Note: We may require you to operate the vehicle or equipment in a specific manner.)

(i) Begin recording engine speed, engine torque (or surrogate), intake air flow, emissions data (THC, NO_x, CO, air/fuel ratio), and time. This is the beginning of the sampling period.

(j) Continue recording data and operating the vehicle or equipment in a normal manner until the end of the sampling period. The length of the

sampling period is based on good engineering practice, the precision requirements of § 1065.910, and applicable limits in the standard-setting part.

(k) You may measure background concentrations and correct measured emission values accordingly. However, if any background corrections are equivalent to 5 percent or more of the maximum emissions allowed by the applicable standard, the test shall be voided and repeated in an environment with lower background concentrations.

§ 1065.925 Calculations.

(a) [Reserved]

(b) Convert emission analyzer data to instantaneous concentrations in ppm (ppmC for the FID).

(c) Calculate instantaneous exhaust volumetric flow rates in m³/hr:
exhaust flow rate = (intake air flow rate)(1 - f/a)

(d) Calculate instantaneous emission rates (g/hr) using the following general equation:

emission rate = (exhaust volumetric flow rate)(ppm)(density factor)/10⁶

Where:

density factors are 576.8 g/m³ for THC, 1913 g/m³ for NO_x, 1164 g/m³ for CO.

(e) Integrate instantaneous emission rates for the entire specified sample period.

(f) Determine instantaneous brake torque and speed.

(g) Calculate instantaneous brake power.

(h) Integrate instantaneous brake power for the entire specified sample period.

(i) Divide the integrated emission rates by the integrated brake power. These are your final brake-specific emission rates.

§ 1065.930 Specifications for mass air flow sensors.

(a) Measure the intake air flow using the engine's mass air flow sensor. If the engine is not equipped with a mass air flow sensor, you need to install one.

(b) The sensor design must have an accuracy and precision of ±5 percent under steady-state laboratory conditions.

(c) The sensor must reach at least 90 percent of its final response within 0.3 seconds after any step change to the flow rate greater than or equal 80 percent of full scale.

(d) Calibrate the sensor according to good engineering practice. Prior to testing verify for each engine that the sensor accurately reads the idle intake air flow rate based on measured

manifold temperature (T_M) and pressure (P_M). Use the following equation:

Intake air flow =
(displacement)(rpm)(volumetric efficiency)/(P_M/101.3 kPa)(293.15/T_M)

§ 1065.935 Specifications for THC analyzers.

(a) Use a flame ionization detector (FID).

(b) The analyzer must have an accuracy and precision of ±2 percent of point or better under steady-state laboratory conditions.

(c) The analyzer must reach at least 90 percent of its final response within 1.0 second after any step change to the input concentration greater than or equal 80 percent of full scale.

(d) Zero and span the analyzer daily during testing. Calibrate it according to the analyzer manufacturer's specifications.

§ 1065.940 Specifications for NO_x and air/fuel sensors.

(a) Use stabilized zirconia-based sensors.

(b) The sensors must have an accuracy and precision of ±2 percent of point or better under steady-state laboratory conditions.

(c) The sensors must reach at least 90 percent of its final response within 1.0 second after any step change to the input concentration greater than or equal 80 percent of full scale.

(d) The sensors must be zeroed and spanned daily during testing, and must be calibrated according to the sensor manufacturer's specifications.

§ 1065.945 Specifications for CO analyzers.

(a) Use a non-dispersive infrared (NDIR) detector that is compensated for CO₂ and water interference.

(b) The analyzer must have an accuracy and precision of ±2 percent of point or better under steady-state laboratory conditions.

(c) The analyzer must reach at least 90 percent of its final response within 5.0 second after any step change to the input concentration greater than or equal 80 percent of full scale.

(d) The analyzer must be zeroed and spanned daily during testing, and must be calibrated according to the analyzer manufacturer's specifications.

§ 1065.950 Specifications for speed and torque measurement.

(a) Determine torque from a previously determined relationship of torque and engine speed, throttle position, and/or manifold absolute pressure. Torque estimates must be between 85 percent and 105 percent of

the true value. You can demonstrate compliance with this accuracy requirement using steady-state laboratory data.

(b) Measure speed from the engine's electronic control module. Speed estimates must be within ± 5 rpm of the true value.

Subpart K—Definitions and Other Reference Information

§ 1065.1000 Definitions.

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them.

The definitions follow:

Accuracy means the maximum difference between a measured or calculated value and the true value, where the true value is determined by NIST.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

Adjustable parameter means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation.

Aftertreatment means relating to any system, component, or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Auxiliary emission-control device means any element of design that senses temperature, engine rpm, motive speed, transmission gear, atmospheric pressure, manifold pressure or vacuum, or any other parameter to activate, modulate, delay, or deactivate the operation of any part of the emission-control system. This also includes any other feature that causes in-use emissions to be higher than those measured under test conditions, except as we allow under this part.

Calibration means the set of specifications and tolerances specific to a particular design, version, or application of a component or assembly capable of functionally describing its operation over its working range.

Certification means obtaining a certificate of conformity for an engine family that complies with the emission standards and requirements in this part.

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

Constant-speed engine means an engine governed to operate only at its rated speed.

Designated Officer means the Manager, Engine Compliance Programs

Group (6403-J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-control system means any device, system, or element of design that controls or reduces the regulated emissions from an engine.

Emission-data engine means an engine that is tested for certification.

Emission-related maintenance means maintenance that substantially affects emissions or is likely to substantially affect emissions deterioration.

Engine means an engine to which this part applies. For equipment subject to this part and regulated under equipment-based standards, the term engine in this part shall be interpreted to include equipment.

Engine-based means having emission standards related to measurements using an engine dynamometer, in units of grams of pollutant per kilowatt-hour.

Engine family means a group of engines with similar emission characteristics, as specified in the standard-setting part.

Engine manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures an engine for sale in the United States or otherwise introduces a new engine into commerce in the United States. This includes importers. For equipment subject to this part and regulated under equipment-based standards, the term engine manufacturer in this part shall be interpreted to include equipment manufacturers.

Equipment-based means having emission standards related to measurements from an engine installed in a vehicle using a chassis dynamometer, in units of grams of pollutant per kilometer.

Fuel system means all components involved in transporting, metering, and mixing the fuel from the fuel tank to the combustion chamber(s), including the fuel tank, fuel tank cap, fuel pump, fuel filters, fuel lines, carburetor or fuel-injection components, and all fuel-system vents.

Good engineering judgment has the meaning we give it in § 1068.5 of this chapter.

Identification number means a unique specification (for example, model number/serial number combination) that allows someone to distinguish a particular engine from other similar engines.

Maximum test torque means the torque output observed with the maximum fueling rate possible at a given speed.

Nonmethane hydrocarbons means the sum of all hydrocarbon species

measured by a FID except methane, expressed with an assumed mass 13.876 grams per mole of carbon atoms.

Nonroad means relating to nonroad engines.

Nonroad engine has the meaning given in § 89.2 of this chapter. In general this means all internal combustion engines except motor vehicle engines, stationary engines, or engines used solely for competition.

Oxides of nitrogen means the oxides of nitrogen measured by the specified test equipment. Specifically, this means nitric oxide (NO) and nitrogen dioxide (NO₂). Oxides of nitrogen are expressed quantitatively as if the NO were in the form of NO₂ (assume a molecular weight for oxides of nitrogen equivalent to that of NO₂).

Precision means two times the coefficient of variance of multiple measurements, except where specified otherwise.

Revoking a certificate of conformity means discontinuing the certificate for an engine family. If we revoke a certificate, you must apply for a new certificate before continuing to produce the affected engines. This does not apply to engines you no longer possess.

Round means to round numbers according to ASTM E29-93a, which is incorporated by reference (see § 1065.1010), unless otherwise specified.

Scheduled maintenance means adjusting, repairing, removing, disassembling, cleaning, or replacing components or systems that is periodically needed to keep a part from failing or malfunctioning. It also may mean actions you expect are necessary to correct an overt indication of failure or malfunction for which periodic maintenance is not appropriate.

Spark-ignition means relating to a type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

Standard-setting part means the part in the Code of Federal Regulations that defines emission standards for a particular engine (see § 1065.1(a)).

Stoichiometry means the proportion of a mixture of air and fuel such that the fuel is fully oxidized with no remaining oxygen. For example, stoichiometric combustion in gasoline engines typically occurs at an air-fuel mass ratio of about 14.7.

Suspending a certificate of conformity means temporarily discontinuing the certificate for an engine family. If we

suspend a certificate, you may not sell engines from that engine family unless we reinstate the certificate or approve a new one.

Test engine means an engine in a test sample.

Test sample means the collection of engines selected from the population of an engine family for emission testing.

Total Hydrocarbon (THC) means the sum of all hydrocarbon species measured by a FID, expressed with an assumed mass 13.876 grams per mole of carbon atoms.

Total Hydrocarbon Equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

Voiding a certificate of conformity means invalidating a certificate, so all the engines produced under that engine family for that model year are considered noncompliant. If we void a certificate, you are liable for each engine produced under the certificate and may face civil or criminal penalties or both.

Voiding an exemption means invalidating an exemption, so all the engines produced under that exemption are considered uncertified (or nonconforming). If we void an exemption, you are liable for each engine produced under the exemption and may face civil or criminal penalties or both. You may not produce any additional engines using the exemption.

§ 1065.1005 Symbols, acronyms, and abbreviations.

The following symbols, acronyms, and abbreviations apply to this part:

°C degrees Celsius.
" inches.

ASTM American Society for Testing and Materials.

cc cubic centimeters.

CFV critical-flow venturi.

CI compression-ignition.

CLD chemiluminescent detector.

CO carbon monoxide.

CO₂ carbon dioxide.

CVS constant-volume sampler.

EFC electronic flow control.

EPA Environmental Protection Agency.

FID flame ionization detector.

g/kW-hr grams per kilowatt-hour.

IBP initial boiling point.

ISO International Organization for Standardization.

kPa kilopascal.

LPG liquefied petroleum gas.

m meters.

mm Hg millimeters of mercury.

NDIR nondispersive infrared.

NIST National Institute for Standards and Testing.

NMHC nonmethane hydrocarbons.

NO nitric oxide.

NO₂ nitrogen dioxide.

NO_x oxides of nitrogen (NO and NO₂).

O₂ oxygen.

PDP positive-displacement pump.

ppm parts per million.

rpm revolutions per minute.

SAE Society of Automotive Engineers.

SI spark-ignition.

THC total hydrocarbon.

THCE total hydrocarbon equivalent.

U.S.C. United States Code.

§ 1065.1010 Reference materials.

We have incorporated by reference the documents listed in this section. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at U.S. EPA, OAR, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460 or Office of the Federal Register, 800 N. Capitol St., NW., 7th Floor, Suite 700, Washington, DC.

(a) *ASTM material*. [Reserved]

(b) *ISO material*. Table 2 of

§ 1065.1010 lists material from the International Organization for Standardization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the section of this part where we reference it. The second column is for information only and may not be all-inclusive. Anyone may receive copies of these materials from International Organization for Standardization, Case Postale 56, CH-1211 Geneva 20, Switzerland. Table 2 follows:

TABLE 2 OF § 1065.1010.—ISO MATERIALS

Document No. and name	Part 1065 reference
ISO 8178, Reciprocating internal combustion engines—Exhaust emission measurement.	1065.125, 1065.130, 1065.135.

(c) *SAE material*. [Reserved]

§ 1065.1015 Confidential information.

(a) Clearly show what you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential

information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in § 2.204 of this chapter.

PART 1068—GENERAL COMPLIANCE PROVISIONS FOR NONROAD PROGRAMS

Subpart A—Applicability and Miscellaneous Provisions

Sec.

1068.1 Does this part apply to me?

1068.5 How must engine manufacturers apply good engineering judgment?

1068.10 How do I request EPA to keep my information confidential?

1068.15 Who is authorized to represent the Agency?

1068.20 May EPA enter my facilities for inspections?

1068.25 What definitions apply to this part?

Subpart B—Prohibited Acts and Related Requirements

1068.101 What general actions does this regulation prohibit?

1068.105 What other provisions apply to me specifically if I manufacture equipment needing certified engines?

1068.110 What other provisions apply to engines in service?

1068.115 When must engine manufacturers honor emission-related warranty claims?

1068.120 What requirements must I follow to rebuild engines?

1068.125 What happens if I violate the regulations?

Subpart C—Exemptions

1068.201 Does EPA exempt any engines from the prohibited acts?

1068.205 What are the provisions for exempting test engines?

1068.210 What are the provisions for exempting manufacturer-owned engines?

1068.215 What are the provisions for exempting display engines?

1068.220 What are the provisions for exempting engines for national security?

1068.225 What are the provisions for exempting engines for export?

1068.230 What are the provisions for exempting engines used solely for competition?

1068.235 What are the provisions for exempting new replacement engines?

1068.240 What temporary provisions address hardship due to unusual circumstances?

1068.241 What are the provisions for extending compliance deadlines for small-volume manufacturers under hardship?

1068.245 What are the provisions for exempting engines for hardship for equipment manufacturers?

Subpart D—Imports

1068.301 Does this subpart apply to me?
 1068.305 How do I get an exemption or exclusion for imported engines?
 1068.310 What are the exclusions for imported engines?
 1068.315 What are the permanent exemptions for imported engines?
 1068.320 How must I label an imported engine with a permanent exemption?
 1068.325 What are the temporary exemptions for imported engines?
 1068.330 What are the penalties for violations?

Subpart E—Selective Enforcement Auditing

1068.401 What is a selective enforcement audit?
 1068.405 What is in a test order?
 1068.410 How must I select and prepare my engines?
 1068.415 How do I test my engines?
 1068.420 How do I know when my engine family does not comply?
 1068.425 What happens if one of my production-line engines exceeds the emission standards?
 1068.430 What happens if an engine family does not comply?
 1068.435 May I sell engines from an engine family with a suspended certificate of conformity?
 1068.440 How do I ask EPA to reinstate my suspended certificate?
 1068.445 When may EPA revoke my certificate under this subpart and how may I sell these engines again?
 1068.450 What records must I send to EPA?
 1068.455 What records must I keep?
 Appendix A to Subpart E of Part 1068—Plans for Selective Enforcement Auditing

Subpart F—Defect Reporting and Recall

1068.501 How do I report engine defects?
 1068.505 How does the recall program work?
 1068.510 How do I prepare and apply my remedial plan?
 1068.515 How do I mark or label repaired engines?
 1068.520 How do I notify affected owners?
 1068.525 What records must I send to EPA?
 1068.530 What records must I keep?
 1068.535 How can I do a voluntary recall for emission-related problems?
 1068.540 What terms do I need to know for this subpart?

Subpart G—Public Hearings

1068.601 How do I request a public hearing?
 1068.605 How will EPA set up a public hearing?
 1068.610 What are the procedures for a public hearing?
 1068.615 How do I appeal a hearing decision?
 1068.620 How does a hearing conclude?
 Appendix I to Part 1068—Emission Related Components, Parameters, and Specifications

Authority: 42 U.S.C. 7401-7671(q).

Subpart A—Applicability and Miscellaneous Provisions

§ 1068.1 Does this part apply to me?

(a) The provisions of this part apply to everyone with respect to the following engines or to equipment using the following engines:

(1) Large nonroad spark-ignition engines we regulate under 40 CFR part 1048.

(2) Snowmobiles, all-terrain vehicles, and off-highway motorcycles we regulate under 40 CFR part 1051.

(b) This part does not apply to any of the following engine or vehicle categories:

(1) Light-duty motor vehicles (see 40 CFR part 86).

(2) Heavy-duty motor vehicles and motor vehicle engines (see 40 CFR part 86).

(3) Aircraft engines (see 40 CFR part 87).

(4) Locomotive engines (see 40 CFR part 92).

(5) Land-based nonroad diesel engines (see 40 CFR part 89).

(6) Marine diesel engines (see 40 CFR parts 89 and 94).

(7) Marine outboard and personal watercraft engines (see 40 CFR part 91).

(8) Small nonroad spark-ignition engines (see 40 CFR part 90).

(c) For equipment subject to this part and regulated under equipment-based standards, interpret the term "engine" in this part to include equipment (see § 1068.25).

(d) Follow the provisions of the standard-setting part if they are different than any of the provisions in this part.

§ 1068.5 How must engine manufacturers apply good engineering judgment?

(a) You must use good engineering judgment for decisions related to any requirements under this chapter. This includes your applications for certification, any testing you do to show that your production-line or in-use engines comply with requirements that apply to them, and how you select, categorize, determine, and apply these requirements.

(b) If we send you a written request, you must give us a written description of the engineering judgment in question. Respond within 15 working days of receiving our request unless we allow more time.

(c) We may reject your decision if it is not based on good engineering judgment or is otherwise inconsistent with the requirements that apply, based on the following provisions:

(1) We may suspend, revoke, or void a certificate of conformity if we determine you deliberately used

incorrect information or overlooked important information, that you did not decide in good faith, or that your decision was not rational.

(2) If we believe a different decision would better reflect good engineering judgment, but none of the provisions of paragraph (c)(1) of this section apply, we will tell you of our concern (and its basis). You will have 30 days to respond to our concerns, or more time if we agree that you need it to generate more information. After considering your information, we will give you a final ruling. If we conclude that you did not use good engineering judgment, we may reject your decision and apply the new ruling to similar situations as soon as possible.

(d) We will tell you in writing of the conclusions we reach under paragraph (c) of this section and explain our reasons for them.

(e) If you disagree with our conclusions, you may file a request for a public hearing with the Designated Officer as described in subpart F of this part. In your request, specify your objections, include data or supporting analysis, and get your authorized representative's signature. If we agree that your request raises a substantial factual issue, we will hold the hearing according to subpart F of this part.

§ 1068.10 How do I request EPA to keep my information confidential?

(a) Clearly identify any information you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2. This procedure applies equally to the Environmental Appeals Board.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in § 2.204 of this chapter.

§ 1068.15 Who is authorized to represent the Agency?

The Administrator of the Environmental Protection Agency or any official to whom the Administrator has delegated specific authority may represent the Agency. For more information, ask for a copy of the relevant sections of the EPA Delegation Manual from the Designated Officer.

§ 1068.20 May EPA enter my facilities for inspections?

(a) If you are a certificate holder, we may inspect your engines, testing, manufacturing processes, engine storage facilities (including port facilities for imported engines), or records to enforce the provisions of this chapter. Inspectors will have authorizing credentials and will limit inspections to reasonable times—usually, normal operating hours.

(b) If we come to inspect, we may or may not have a warrant or court order.

(1) If we do not have a warrant or court order, you may deny us entry.

(2) If we have a warrant or court order, you must allow us to enter the facility and carry out the activities it describes.

(c) We may seek a warrant or court order authorizing an inspection described in this section, whether or not we first tried to get your permission to inspect.

(d) We may select any facility to do any of the following:

(1) Inspect and monitor any aspect of engine manufacturing, assembly, storage, or other procedures, and any facilities where you do them.

(2) Inspect and monitor any aspect of engine test procedures or test-related activities, including test engine selection, preparation, service accumulation, emission duty cycles, and maintenance and verification of your test equipment's calibration.

(3) Inspect and copy records or documents related to assembling, storing, selecting, and testing an engine.

(4) Inspect and photograph any part or aspect of engines and components you use for assembly.

(e) You must give us reasonable help without charge during an inspection. For example, you may need to help us arrange an inspection with the facility's managers, including clerical support, copying, and translation. You may also need to show us how the facility operates and answer other questions. If we ask in writing to see a particular employee at the inspection, you must ensure that he or she is present (legal counsel may accompany the employee).

(f) If you have facilities in other countries, we expect you to locate them in places where local law does not keep us from inspecting as described in this section. We will not try to inspect if we learn that local law prohibits it, but we may suspend your certificate if we are not allowed to inspect.

§ 1068.25 What definitions apply to this part?

The following definitions apply to this part:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

Aircraft means any vehicle capable of sustained air travel above treetop heights.

Certificate holder means an engine manufacturer (including importers) with a valid certificate of conformity for at least one engine family in a given calendar year.

Designated Officer means the Manager of the Engine Programs Group (6403-J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Engine means an engine to which this part applies. For equipment subject to this part and regulated under equipment-based standards, the term engine in this part shall be interpreted to include equipment.

Engine-based means having emission standards related to measurements using an engine dynamometer, in units of grams of pollutant per kilowatt-hour.

Engine manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures an engine for sale in the United States or otherwise introduces a new engine into commerce in the United States. This includes importers. For equipment subject to this part and regulated under equipment-based standards, the term engine manufacturer in this part shall be interpreted to include equipment manufacturers.

Equipment-based means having emission standards related to measurements from an engine installed in a vehicle using a chassis dynamometer, in units of grams of pollutant per kilometer.

Equipment manufacturer means any company producing a piece of equipment for sale or use in the United States.

New has the meaning we give it in the standard-setting part.

Nonroad engine means:

(1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of

transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) The engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or

(iii) The engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph (2)(iii) of this definition does not apply to an engine after the engine is removed from the location.

Operating hours means:

(1) For engine storage areas or facilities, times during which people other than custodians are at work near, and can access, a storage area or facility.

(2) For other areas or facilities, times during which an assembly line operates or any of the following activities occurs:

(i) Testing, maintenance, or service accumulation.

(ii) Production or compilation of records.

(iii) Certification testing.

(iv) Translation of designs from the test stage to the production stage.

(v) Engine manufacture or assembly.

Piece of equipment means any vehicle, vessel, locomotive, aircraft, or other type of equipment using engines to which this part applies.

Placed into service means used for its intended purpose.

Standard-setting part means the part in the Code of Federal Regulations that defines emission standards for a particular engine (see § 1068.1(a)).

Ultimate purchaser means the first person who in good faith buys a new engine without intending to resell it.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

We (us, our) means the Administrator of the Environmental Protection Agency and any authorized representatives.

Subpart B—Prohibited Acts and Related Requirements

§ 1068.101 What general actions does this regulation prohibit?

(a) The following prohibitions apply to manufacturers of new engines and manufacturers of equipment containing these engines, except as described in subparts C and D of this part:

(1) You may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine or equipment after emission standards take effect for that engine or equipment, unless it has a valid certificate of conformity for its model year and the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment containing an engine subject to this part's provisions, unless the engine has a valid certificate of conformity for its model year and the required engine label or tag. This requirement also covers new engines you produce to replace an older engine in a piece of equipment, unless the engine qualifies for the replacement-engine exemption in § 1068.235. The maximum civil penalty is \$27,500 for each engine in violation.

(2) This chapter requires you to record certain types of information to show that you meet our standards. You may not omit these requirements to make and maintain required records (including those described in § 1068.501). You may not deny us access to or copying of your records if we have the authority to see or copy them. Also, you may not delay or omit giving us required reports or information. The maximum civil penalty is \$27,500 for each day in violation.

(3) You may not keep us from entering your facility to test engines or inspect if we are authorized to do so. Also, you may not omit tests we require (or omit having the tests done for you). The maximum civil penalty is \$27,500 for each day in violation.

(b) The following prohibitions apply to everyone with respect to the engines to which this part applies:

(1) You may not remove or disable a device or element of design that may affect an engine's emission levels. This restriction applies before and after the engine is placed in service. Section 1068.120 describes how this applies to rebuilding engines. For a manufacturer or dealer, the maximum civil penalty is \$27,500 for each engine in violation. For anyone else, the maximum civil penalty is \$2,500 for each engine in violation. This does not apply in any of the following situations:

(i) You need to repair an engine and you restore it to proper functioning when the repair is complete.

(ii) You need to modify an engine to respond to a temporary emergency and you restore it to proper functioning as soon as possible.

(iii) You modify a new engine that another manufacturer has already certified to meet emission standards, intending to recertify it under your own engine family. In this case you must tell the original manufacturer not to include the modified engines in the original engine family.

(2) You may not knowingly manufacture, sell, offer to sell, or install, an engine part if one of its main effects is to bypass, impair, defeat, or disable the engine's control of emissions. The maximum civil penalty is \$2,500 for each part in violation.

(3) For an engine that is excluded from any requirements of this chapter because it is a stationary engine, you may not move it or install it in any mobile equipment, except as allowed by the provisions of this chapter. You may not circumvent or attempt to circumvent the residence-time requirements of paragraph (2)(iii) of the nonroad engine definition in § 1068.25. The maximum civil penalty is \$27,500 for each day in violation.

(4) For an engine or piece of equipment that is excluded from any requirements of this chapter because it is to be used solely for competition, you may not use it in a manner that is inconsistent with use solely for competition. The maximum civil penalty is \$27,500 for each day in violation.

(c) Exemptions from these prohibitions are described in subparts C and D of this part.

(d) The standard-setting parts describe more requirements and prohibitions that apply to engine manufacturers (including importers) and others under this chapter.

(e) The maximum penalties in paragraphs (a) and (b) of this section and in § 1068.125(b) are in 1970 dollars. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law

101-410, 104 Stat. 890 and 28 U.S.C. 2461) and associated regulations describe how to adjust these figures based on the date of the violation.

§ 1068.105 What other provisions apply to me specifically if I manufacture equipment needing certified engines?

(a) *Transitioning to new standards.* You may use up your normal inventory of engines not certified to new emission standards if they were built before the date of the new standards. However, stockpiling these engines violates § 1068.101(a)(1).

(b) *Installing engines.* You must follow the engine manufacturer's emission-related installation instructions. For example, you may need to constrain where you place an exhaust aftertreatment device or integrate into your equipment models a device for sending visual or audible signals to the operator. Not meeting the manufacturer's emission-related installation instructions is a violation of § 1068.101(b)(1).

(c) *Attaching a duplicate label.* If you obscure the engine's label, you must do three things to avoid violating § 1068.101(a)(1):

(1) Permanently attach to your equipment a duplicate label. Secure it to a part needed for normal operation and not normally requiring replacement.

(2) Make sure your label is identical to the engine label. You may make the label yourself or get it from the engine manufacturer.

(3) Make sure an average person can easily read it.

(d) *Producing nonroad equipment certified to highway emission standards.* You may produce nonroad equipment from complete or incomplete motor vehicles with the motor vehicle engine if you meet three criteria:

(1) The engine or vehicle is certified to 40 CFR part 86.

(2) The engine is not adjusted outside the manufacturer's specifications.

(3) The engine or vehicle is not modified in any way that may affect its emission control. This applies to evaporative emission controls, but not refueling emission controls.

§ 1068.110 What other provisions apply to engines in service?

(a) *Aftermarket parts and service.* As the engine manufacturer, you may not require anyone to use your parts or service to maintain or repair an engine, unless we approve this in your application for certification.

(b) *Certifying aftermarket parts.* As the manufacturer or rebuilder of an aftermarket engine part, you may—but are not required to—certify according to

§ 85.2114 of this chapter that using the part will not cause engines to fail to meet emission standards.

(c) *Defeat devices.* We may test equipment or engines to investigate potential defeat devices. We may also require the engine manufacturer to do this testing. If we choose to investigate one of your designs, we may require you to show us that it does not have a defeat device. To do this, you may have to share with us information regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies.

(d) *Warranty and maintenance.* Owners may make warranty claims against the engine manufacturer for emission-related parts, as described in § 1068.115. This generally includes any emission-related engine parts that were not in common use before we have adopted emission standards. In general, we consider replacement or repair of any other components to be the owner's responsibility. The warranty period begins when the engine is first placed into service.

§ 1068.115 When must engine manufacturers honor emission-related warranty claims?

(a) As an engine manufacturer, you may not deny emission-related warranty claims based on any of the following:

- (1) Maintenance or other service you or your authorized facilities performed.
- (2) Engine repair work that an operator performed to correct an unsafe, emergency condition attributable to you, as long as the operator tries to restore the engine to its proper configuration as soon as possible.
- (3) Any action or inaction by the operator unrelated to the warranty claim.
- (4) Maintenance that was performed more frequently than you specify.
- (5) Anything that is your fault or responsibility.
- (6) The use of any fuel that is commonly available where the engine operates, unless your written maintenance instructions state that this fuel would harm the engine's emission control system and operators can readily find the proper fuel.

(b) As long as none of the restrictions of paragraph (a) of this section apply, you may deny an emission-related warranty claim if either of the following occurs:

- (1) Owners are not able to show they followed your written maintenance instructions, as described in paragraph (c) of this section.
- (2) You prove that the warranty claim was caused by any of the following:

(i) The operator abused the engine by using it for purposes for which it was not designed.

(ii) Someone improperly installed an engine part or set engine parameters outside your specified adjustable ranges during any scheduled maintenance related to the affected part or system.

(iii) Someone permanently removed or disabled the engine's emission control system or any of its components related to the affected part or system.

(c) You may ask owners to show they followed your written maintenance instructions only if you have an objective reason to believe they did not follow these instructions and that this would have caused the defect that is the subject of their warranty claim.

(1) If owners do their own maintenance, they may state that they performed the prescribed maintenance at the approximate intervals (in months or operating hours) and show they bought and used proper parts. You may ask them to show they are able to perform the maintenance properly.

(2) If owners hire others to maintain their engines, they may rely on service receipts or a maintenance log book validated at the approximate intervals (in months or operating hours) by those who performed the maintenance.

§ 1068.120 What requirements must I follow to rebuild engines?

(a) This section describes the steps to take when rebuilding engines to avoid violating the tampering prohibition in § 1068.101(b)(1). These requirements apply to anyone rebuilding an engine subject to this part, but the reporting requirements in paragraphs (i) and (j) of this section apply only to businesses.

(b) The term "rebuilding" refers to a partial or complete rebuild of an engine or engine system, including a major overhaul in which you replace the engine's power assemblies or make other changes that significantly increase the service life of the engine. It also includes replacing or rebuilding an engine's turbocharger or aftercooler or its systems for fuel metering or electronic control. For these provisions, rebuilding may or may not involve removing the engine from the equipment. For other maintenance or service that is not rebuilding, you must still not make changes that might increase emissions, but you do not need to keep any records.

(c) If you rebuild an engine, you must have a reasonable technical basis for knowing that the rebuilt engine has the same emissions performance as the engine in its certified configuration. Identify the model year of the resulting

engine configuration. You have a reasonable basis if you meet two main conditions:

(1) Install parts—new, used, or rebuilt—so a person familiar with engine design and function would reasonably believe that the engine with those parts will control emissions to the same degree as with the original parts.

(2) Adjust parameters or change design elements only according to the original engine manufacturer's instructions. Or, if you differ from these instructions, you must have data or some other technical basis to show you should not expect in-use emissions to increase.

(d) If the rebuilt engine remains installed or is reinstalled in the same piece of equipment, you must rebuild it to the original configuration or another certified configuration of the same or later model year.

(e) If the rebuilt engine replaces another engine in a piece of equipment, you must rebuild it to a certified configuration that equals the emissions performance of the engine you are replacing.

(f) Do not erase or reset emission-related codes or signals from onboard monitoring systems without diagnosing and responding appropriately to any diagnostic codes. This requirement applies regardless of the manufacturer's reason for installing the monitoring system and regardless of its form or interface. Clear any codes from diagnostic systems when you return the rebuilt engine to service. Do not disable a diagnostic signal without addressing its cause.

(g) When you rebuild an engine, check, clean, adjust, repair, or replace all emission-related components (listed in Appendix I of this part) as needed according to the original manufacturer's recommended practice. In particular, replace oxygen sensors, replace the catalyst if there is evidence of malfunction, clean gaseous fuel system components, and replace fuel injectors (if applicable).

(h) If you are installing an engine that someone else has rebuilt, check all emission-related components listed in Appendix I of this part as needed according to the original manufacturer's recommended practice.

(i) Keep at least the following records:

- (1) Identify the hours of operation (or mileage, as appropriate) at time of rebuild.
- (2) Identify the work done on the engine or any emission-related control components, including a listing of parts and components you used.
- (3) Describe any engine parameter adjustments.

(4) Identify any emission-related codes or signals you responded to and reset.

(j) You must show us or send us your records if we ask for them. Keep records for at least two years after rebuilding an engine. Keep them in any format that allows us to readily review them.

(1) You do not need to keep information that is not reasonably available through normal business practices. We do not expect you to have information that you cannot reasonably access.

(2) You do not need to keep records of what other companies do.

(3) You may keep records based on engine families rather than individual engines if that is the way you normally do business.

§ 1068.125 What happens if I violate the regulations?

(a) *Civil penalties and injunctions.* We may bring a civil action to assess and recover civil penalties and/or enjoin and restrain violations in the United States District Court for the district where you allegedly violated a requirement, or the district where you live or have your main place of business. Actions to assess civil penalties or restrain violations of § 1068.101 must be brought by and in the name of the United States. The selected court has jurisdiction to restrain violations and assess civil penalties.

(1) To determine the amount of a civil penalty and reach a just conclusion, the court considers six main factors:

- (i) The seriousness of your violation.
- (ii) How much you benefitted or saved because of the violation.
- (iii) The size of your business.
- (iv) Your history of compliance with Title II of the Act.
- (v) What you did to remedy the violation.
- (vi) How the penalty will affect your ability to continue in business.

(2) Subpoenas for witnesses who must attend a district court in any district may apply to any other district.

(b) *Administrative penalties.* Instead of bringing a civil action, we may assess administrative penalties if the total is less than \$200,000 against you individually. This maximum penalty may be greater if the Administrator and the Attorney General jointly determine that is appropriate for administrative penalty assessment. No court may review such a determination. Before we assess an administrative penalty, you may ask for a hearing (subject to 40 CFR part 22).

(1) To determine the amount of an administrative penalty, we will consider the factors described in paragraph (a)(1) of this section.

(2) An administrative order we issue under this paragraph (b) becomes final 30 days after we issue it, unless you ask for judicial review by that time (see paragraph (c) of this section). You may ask for review by any of the district courts listed in paragraph (a) of this section. Send the Administrator a copy of the filing by certified mail.

(3) We will not pursue an administrative action for a violation if either of the following two conditions is true:

(i) We are separately prosecuting the violation under this part.

(ii) We have issued a final order for a violation, no longer subject to judicial review, for which you have already paid a penalty.

(c) *Judicial review.* If you ask a court to review a civil or administrative penalty, we will file in the appropriate court within 30 days of your request a certified copy or certified index of the record on which the court or the Administrator issued the order.

(1) The judge may set aside or remand any order issued under this section only if he or she believes one of the following is true:

(i) Substantial evidence does not exist in the record, taken as a whole, to support finding a violation.

(ii) The Administrator's assessment of the penalty is an abuse of discretion.

(2) The judge may add civil penalties if he or she believes our penalty is an abuse of discretion that favors you.

(d) *Effect of enforcement actions on other requirements.* Our pursuit of civil or administrative penalties does not affect or limit our authority to enforce any provisions of this chapter.

(e) *Penalties.* In any proceedings, the United States government may seek to collect civil penalties assessed under this section.

(1) Once a penalty assessment is final, if you do not pay it, the Administrator will ask the Attorney General to bring a civil action in an appropriate district court to recover the money. We may collect interest from the date of the final order or final judgment at rates established by the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)). In this action to collect overdue penalties, the court will not review the validity, amount, and appropriateness of the penalty.

(2) In addition, if you do not pay the full amount of a penalty on time, you must then pay more to cover interest, enforcement expenses (including attorney's fees and costs for collection), and a quarterly nonpayment penalty for each quarter you do not pay. The nonpayment penalty is 10 percent of your total penalties plus any unpaid

nonpayment penalties from previous quarters.

Subpart C—Exemptions

§ 1068.201 Does EPA exempt any engines from the prohibited acts?

We may exempt new engines from the prohibited acts in subpart B of this part under requirements described in this subpart. We may exempt an engine already placed in service in the United States from the prohibition in § 1068.101(b)(1) if the exemption for engines used solely for competition applies (see § 1068.230).

(a) This subpart identifies which engines qualify for exemptions and what information we need. We may ask for more information.

(b) If you violate any of the terms, conditions, instructions, or requirements to qualify for an exemption, we may void the exemption.

(c) If you use an exemption under this subpart, we may require you to add a permanent label to your exempted engines.

(d) If you produce engines we exempt under this subpart, we may require you to make and keep records, perform tests, make reports and provide information as needed to reasonably evaluate the validity of the exemption.

(e) If you own or operate engines we exempt under this subpart, we may require you to provide information as needed to reasonably evaluate the validity of the exemption.

(f) Subpart D of this part describes how we apply these exemptions to engines you import (or intend to import).

(g) If you want to ask for an exemption or need more information, write to the Designated Officer.

§ 1068.205 What are the provisions for exempting test engines?

(a) We may exempt engines you use for research, investigations, studies, demonstrations, or training.

(b) Anyone may ask for a testing exemption.

(c) If you are a certificate holder, you may request an exemption for engines you intend to include in test programs over a two-year period.

(1) In your request, tell us the maximum number of engines involved and describe how you will make sure exempted engines are used only for this testing.

(2) Give us the information described in paragraph (d) of this section if we ask for it.

(d) If you are not a certificate holder do all of the following:

(1) Show that the proposed test program has a valid purpose under paragraph (a) of this section.

(2) Show you need an exemption to achieve the purpose of the test program (time constraints may be a basis for needing an exemption, but the cost of certification alone is not).

(3) Estimate the duration of the proposed test program and the number of engines involved.

(4) Allow us to monitor the testing.

(5) Describe how you will ensure that you stay within this exemption's purposes. Address at least the following things:

(i) The technical nature of the test.

(ii) The test site.

(iii) The duration and accumulated engine operation associated with the test.

(iv) Ownership of the engines involved in the test.

(v) The intended final disposition of the engines.

(vi) How you will identify, record, and make available the engine identification numbers.

(vii) The means or procedure for recording test results.

(e) If we approve your request for a testing exemption, we will send you a letter or a memorandum for your signature describing the basis and scope of the exemption. It will also include any necessary terms and conditions, which normally require you to do the following:

(1) Stay within the scope of the exemption.

(2) Create and maintain adequate records that we may inspect.

(3) Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

(i) The label heading "EMISSION CONTROL INFORMATION."

(ii) Your corporate name and trademark.

(iii) Engine displacement, engine family identification, and model year of the engine or whom to contact for further information.

(iv) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.205 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."

(4) Tell us when the test program is finished.

(5) Tell us the final disposition of the engines.

(6) Send us a written confirmation that you meet the terms and conditions of this exemption.

§ 1068.210 What are the provisions for exempting manufacturer-owned engines?

(a) You are only eligible for the exemption for manufacturer-owned engines if you are a certificate holder.

(b) An engine may be exempt without a request if it is a nonconforming engine under your ownership and control and you operate it to develop products, assess production methods, or promote your engines in the marketplace. You may not lease, sell, or use the engine to generate revenue, either by itself or in a piece of equipment.

(c) To use this exemption, you must do three things:

(1) Establish, maintain, and keep adequately organized and indexed information on each exempted engine, including the engine identification number, the use of the engine on exempt status, and the final disposition of any engine removed from exempt status.

(2) Let us access these records, as described in § 1068.20.

(3) Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

(i) The label heading "EMISSION CONTROL INFORMATION."

(ii) Your corporate name and trademark.

(iii) Engine displacement, engine family identification, and model year of the engine or whom to contact for further information.

(iv) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.210 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."

§ 1068.215 What are the provisions for exempting display engines?

(a) You are only eligible for the exemption for display engines if you are a certificate holder.

(b) A display engine is exempt without a request if it is a nonconforming engine you use only for displays in the interest of a business or the general public. This exemption does not apply to engines displayed for any of the following:

(1) For private use.

(2) For other purposes that are not available to the public daily.

(3) For any other purpose we determine is inappropriate for a display exemption.

(c) You may operate the exempted engine, but only if the operation is part of the display. You may not sell or lease a display engine or use it to generate revenue without a certificate of conformity and an engine label.

(d) To use this exemption, you must add a permanent, legible label, written

in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

(1) The label heading "EMISSION CONTROL INFORMATION."

(2) Your corporate name and trademark.

(3) Engine displacement, engine family identification, and model year of the engine or whom to contact for further information.

(4) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.215 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."

§ 1068.220 What are the provisions for exempting engines for national security?

(a) You are only eligible for the exemption for national security if you are an engine manufacturer.

(b) Your engine is exempt without a request if you produce it for a piece of equipment owned or used by an agency of the federal government responsible for national defense, where the equipment has armor, permanently attached weaponry, or other substantial features typical of military combat.

(c) You may request a national security exemption for engines not meeting the conditions of paragraph (b) of this section, as long as your request is endorsed by an agency of the federal government responsible for national defense. In your request, explain why you need the exemption.

§ 1068.225 What are the provisions for exempting engines for export?

(a) If you export a new engine to a country with emission standards identical to ours, we will not exempt it. These engines must comply with our certification requirements.

(b) If you export an engine to a country with different emission standards or no emission standards, it is exempt from the prohibited acts in this part without a request. If you produce an exempt engine for export and it is sold or offered for sale to someone in the United States (except for export), we will void the exemption.

(c) Label each exempted engine and shipping container with a label or tag showing the engine is not certified for sale or use in the United States. The label must include at least the statement "THIS ENGINE IS SOLELY FOR EXPORT AND IS THEREFORE IS EXEMPT UNDER 40 CFR 1068.225 FROM U.S. EMISSION STANDARDS AND RELATED REQUIREMENTS."

§ 1068.230 What are the provisions for exempting engines used solely for competition?

(a) If you modify an engine after it has been placed into service in the United States so it will be used solely for competition, it is exempt without request. This exemption applies only to the prohibition in § 1068.101(b)(1) and is valid only as long as the engine is used solely for competition.

(b) If you modify an engine under this exemption, you must destroy the original emissions label. If you sell or give one of these engines to someone else, you must tell the new owner in writing that it may be used only for competition.

(c) New engines you produce that are used solely for competition are generally excluded from emission standards. See the standard-setting parts for specific provisions.

§ 1068.235 What are the provisions for exempting new replacement engines?

(a) You are only eligible for the exemption for new replacement engines if you are a certificate holder.

(b) The prohibitions in § 1068.101(a)(1) do not apply to an engine if all the following conditions apply:

(1) You produce a new engine to replace an engine already placed in service in a piece of equipment.

(2) The engine being replaced was manufactured before the emission standards that would otherwise apply to the new engine took effect.

(3) No engine certified to current emission requirements is available with the appropriate physical or performance characteristics for the piece of equipment.

(4) You or your agent takes possession of the old engine.

(5) You clearly label the replacement engine with the following language, or similar alternate language that we approve:

THIS ENGINE DOES NOT COMPLY WITH FEDERAL NONROAD OR HIGHWAY EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE IN A VEHICLE OR PIECE OF EQUIPMENT BUILT BEFORE JANUARY 1, [INSERT APPROPRIATE YEAR] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(6) You make the replacement engine in a configuration identical in all material respects to the engine being replaced (or that of another certified engine of the same or later model year). This requirement applies only if the old engine was certified to emission standards less stringent than those in

effect when you produce the replacement engine.

§ 1068.240 What temporary provisions address hardship due to unusual circumstances?

(a) After considering the circumstances, we may permit you to introduce into commerce engines or equipment that do not comply with emission standards if all the following conditions and requirements apply:

(1) Unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion prevent you from meeting requirements from this chapter.

(2) You exercised prudent planning and were not able to avoid the violation; you have taken all reasonable steps to minimize the extent of the nonconformity.

(3) Not having the exemption will jeopardize the solvency of your company.

(4) No other allowances are available under the regulations in this chapter to avoid the impending violation.

(b) To apply for an exemption, you must send the Designated Officer a written request as soon as possible before you are in violation. In your request, show that you meet all the conditions and requirements in paragraph (a) of this section.

(c) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(d) You must give us other relevant information if we ask for it.

(e) We may include reasonable additional conditions on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit or paying fees to offset any economic gain resulting from the exemption. For example, in the case of multiple tiers of emission standards, we may require that you meet the less stringent standards.

§ 1068.241 What are the provisions for extending compliance deadlines for small-volume manufacturers under hardship?

(a) After considering the circumstances, we may extend the compliance deadline for you to meet new or revised emission standards, as long as you meet all the conditions and requirements in this section.

(b) To be eligible for this exemption, you must qualify under the standard-setting part for special provisions for small businesses or small-volume manufacturers.

(c) To apply for an extension, you must send the Designated Officer a written request. In your request, show

that all the following conditions and requirements apply:

(1) You have taken all possible business, technical, and economic steps to comply.

(i) In the case of importers, show that you are unable to find a manufacturer capable of supplying complying products.

(ii) For all other manufacturers, show that the burden of compliance costs prevents you from meeting the requirements of this chapter.

(2) Not having the exemption will jeopardize the solvency of your company.

(3) No other allowances are available under the regulations in this chapter to avoid the impending violation.

(d) In describing the steps you have taken to comply under paragraph (c)(1) of this section, include at least the following information:

(1) Describe your business plan, showing the range of projects active or under consideration.

(2) Describe your current and projected financial standing, with and without the burden of complying with regulations.

(3) Describe your efforts to raise capital to comply with regulations.

(4) Identify the engineering and technical steps you have taken or plan to take to comply with regulations.

(5) Identify the level of compliance you can achieve. For example, you may be able to produce engines that meet a somewhat less stringent emission standard than the regulations in this chapter require.

(e) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(f) You must give us other relevant information if we ask for it.

(g) An authorized representative of your company must sign the request and include the statement: "All the information in this request is true and accurate, to the best of my knowledge."

(h) Send your request for this extension at least nine months before the relevant deadline. If different deadlines apply to companies that are not small-volume manufacturers, do not send your request before the regulations in question apply to the other manufacturers. Otherwise, do not send your request more than three years before the relevant deadline.

(i) We may include reasonable requirements on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit. For example, we may require that you meet a less stringent emission standard or buy and use available emission credits.

(j) We will approve extensions of up to one year. We may review and revise an extension as reasonable under the circumstances.

§ 1068.245 What are the provisions for exempting engines for hardship for equipment manufacturers?

(a) *Equipment exemption.* As an equipment manufacturer in the case of an engine-based standard, you may ask for approval to produce exempted equipment for up to one year. Send the Designated Officer a written request for an exemption before you are in violation. In your request, show you are not at fault for the impending violation and that you would face serious economic hardship if we do not grant the exemption. This exemption is not available if you manufacture the engine you need for your own equipment, unless we allow it elsewhere in this chapter. We may impose other conditions, including provisions to recover the lost environmental benefit.

(b) *Engine exemption.* As an engine manufacturer, you may produce nonconforming engines for the equipment we exempt in paragraph (a) of this section. You do not have to request this exemption for your engines, but you must have written assurance from equipment manufacturers that they need a certain number of exempted engines under this section. Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

(1) The label heading "EMISSION CONTROL INFORMATION."

(2) Your corporate name and trademark.

(3) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(4) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.245 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."

Subpart D—Imports

§ 1068.301 Does this subpart apply to me?

(a) This subpart applies to you if you import into the United States engines or equipment subject to our emission standards or equipment containing engines subject to our emission standards.

(b) In general, engines that you import must be covered by a certificate of conformity unless they were built before emission standards started to apply. This subpart describes the limited cases where we allow importation of exempt or excluded engines.

(c) The U.S. Customs Service may prevent you from importing an engine if you do not meet the requirements of this subpart. In addition, U.S. Customs Service regulations may contain other requirements for engines imported into the United States (see 19 CFR Chapter I).

§ 1068.305 How do I get an exemption or exclusion for imported engines?

(a) Prepare a written request in which you do the following:

(1) Give your name, address, telephone number, and taxpayer identification number.

(2) Give the engine owner's name, address, telephone number, and taxpayer identification number.

(3) Identify the make, model, identification number, and original production year of each engine.

(4) Identify which exemption or exclusion in this subpart allows you to import a nonconforming engine and describe how your engine qualifies.

(5) Tell us where you will keep your engines if you might need to store them until we approve your request.

(6) Authorize us to inspect or test your engines as the Act allows.

(b) We may ask for more information.

(c) You may import the nonconforming engines you identify in your request if you get prior written approval from us. The U.S. Customs Service may require you to show them the approval letter. We may temporarily or permanently approve the exemptions or exclusions, as described in this subpart.

(d) Make sure the engine meets any labeling requirements that apply, as described in this subpart.

§ 1068.310 What are the exclusions for imported engines?

The emission standards of this part do not apply to excluded engines that you import. If you show us that your engines qualify under one of the following provisions, we will approve your request to exclude engines:

(a) *Engines used solely for competition.* See the standard-setting part for any special provisions that apply to engines used solely for competition. Section 1068.101(b)(4) prohibits using these engines for other purposes.

(b) *Stationary engines.* This includes engines that will be used in a permanently fixed location and engines meeting the criteria for the exclusion in paragraph (2)(iii) of the nonroad engine definition in § 1068.25. Section 1068.101(b)(3) prohibits using these engines for other purposes.

(c) *Hobby engines.* See 40 CFR 90.1.

(d) *Engines used in aircraft.* See 40 CFR part 87.

(e) *Engines used in underground mining.* See 40 CFR 89.1.

§ 1068.315 What are the permanent exemptions for imported engines?

We may approve a permanent exemption for an imported engine under the following conditions:

(a) *National security exemption.* You may import an engine under the national security exemption in § 1068.220.

(b) *Manufacturer-owned engine exemption.* You may import a manufacturer-owned engine, as described in § 1068.210.

(c) *Replacement engine exemption.* You may import a nonconforming replacement engine as described in § 1068.235. To use this exemption, you must be a certificate holder for an engine family we regulate under the same part as the replacement engine.

(d) *Extraordinary circumstances exemption.* You may import a nonconforming engine if we grant hardship relief as described in § 1068.240.

(e) *Hardship exemption.* You may import a nonconforming engine if we grant an exemption for the transition to new or revised emission standards, as described in § 1068.245.

(f) *Identical configuration exemption.* You may import a nonconforming engine if it is identical to certified engines, subject to the following provisions:

(1) You may import only the following engines under this exemption:

(i) Large nonroad spark-ignition engines (see part 1048 of this chapter).

(ii) Recreational nonroad spark-ignition engines and equipment (see part 1051 of this chapter).

(2) You must meet all the following criteria:

(i) You have owned the engine for at least one year.

(ii) You agree not to sell, lease, donate, trade, or otherwise transfer ownership of the engine for at least five years, or until the engine is eligible for the exemption in paragraph (h) of this section. The only acceptable way to dispose of the engine is to destroy or export it.

(iii) You use data or evidence sufficient to show that the engine is in a configuration that is the same as an engine the original manufacturer has certified to meet emission standards that apply at the time the manufacturer finished assembling or modifying the engine in question. If you modify the engine to make it identical, you must follow the original manufacturer's complete written instructions.

(3) We will tell you in writing if we find the information insufficient to show that the engine is eligible for this exemption. In this case, we will not consider your request further until you address our concerns.

(g) *Personal-use exemption.* You may import a nonconforming engine for your personal use.

(1) You may import only the number of engines shown in the following Table 1 during your lifetime:

TABLE 1 OF § 1068.315.—NUMBER OF ENGINES ALLOWED UNDER THE PERSONAL-USE EXEMPTION

Type of engine or equipment	Standard-setting part	Maximum number of engines
Large nonroad spark-ignition engines	1048	1
Recreational nonroad spark-ignition engines and equipment	1051	3

(2) To use this exemption, you must meet both the following criteria:

(i) You have owned the engine for at least one year.

(ii) You agree not to sell, lease, donate, trade, or otherwise transfer ownership of the engine for at least five years, or until the engine is eligible for the exemption in paragraph (h) of this section. The only acceptable way to dispose of the engine is to destroy or export it.

(3) You do not need our approval, but you must send the Designated Officer a form in which you do the following:

(i) Identify the engine importer's name, address, telephone number, and taxpayer identification number.

(ii) Identify your name, address, telephone number, and taxpayer identification number.

(iii) State the number of each type of engine that you have ever imported under this exemption.

(iv) State that you agree not to sell or lease the engine in the United States.

(v) Identify the engine's make, model, and identification number as well as the year the manufacturer finished assembling the engine.

(vi) Authorize us to inspect as the Act and the regulations permit.

(4) Respond promptly if we ask for more information.

(h) *Ancient engine exemption.* If you are not the original engine manufacturer, you may import a nonconforming engine that was first manufactured at least 21 years earlier, as

long as it is still in its original configuration.

§ 1068.320 How must I label an imported engine with a permanent exemption?

(a) For engines imported under § 1068.315 (a), (b), (c), (d), or

(e), you must place a permanent label or tag on each engine. If no specific label requirements from subpart C of this part apply, you must meet the following requirements:

(1) Attach the label or tag in one piece so no one can remove it without destroying or defacing it.

(2) Make sure it is durable and readable for the engine's entire life.

(3) Secure it to a part of the engine needed for normal operation and not normally requiring replacement.

(4) Write it in block letters in English.

(5) Make it readily visible to the average person after the engine is installed in the equipment.

(b) On the engine label or tag, do the following:

(1) Include the heading "Emission Control Information."

(2) Include your full corporate name and trademark.

(3) State the engine displacement (in liters) and rated power.

(4) State: "THIS ENGINE IS EXEMPT FROM THE REQUIREMENTS OF [identify the part referenced in 40 CFR 1068.1(a) that would otherwise apply], AS PROVIDED IN [identify the paragraph authorizing the exemption (for example, "40 CFR 1068.315(a)"]]. INSTALLING THIS ENGINE IN ANY DIFFERENT APPLICATION IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY."

(c) Get us to approve alternate label language if it is more accurate for your engine.

§ 1068.325 What are the temporary exemptions for imported engines?

If we approve a temporary exemption for an engine, you may import it under the conditions in this section. We may ask the U.S. Customs Service to require a specific bond amount to make sure you comply with the requirements of this subpart. You may not sell or lease one of these engines while it is in the United States. You must eventually export the engine as we describe in this section unless you get a certificate of conformity for it or it qualifies for one of the permanent exemptions in § 1068.315.

(a) *Exemption for repairs or alterations.* You may temporarily import a nonconforming engine under bond solely to repair or alter it. You may operate the engine in the United States only to repair or alter it or to ship it to

or from the service location. Export the engine directly after the engine servicing is complete.

(b) *Testing exemption.* You may temporarily import a nonconforming engine under bond for testing if you follow the requirements of § 1068.205. You may operate the engine in the United States only to allow testing. This exemption expires one year after you import the engine, unless we approve a one-time request for an extension of up to one more year. The engine must be exported before the exemption expires.

(c) *Display exemption.* You may temporarily import a nonconforming engine under bond for display, as described in § 1068.215. This exemption expires one year after you import the engine, unless we approve your request for an extension. We may approve an extension of up to one more year for each request, but no more than three years in total. The engine must be exported by the time the exemption expires or directly after the display concludes, whichever comes first.

(d) *Export exemption.* You may temporarily import a nonconforming engine to export it, as described in § 1068.225. You may operate the engine in the United States only as needed to prepare it for export. Label the engine as described in § 1068.225.

(e) *Diplomatic or military exemption.* You may temporarily import nonconforming engines without bond if you represent a foreign government in a diplomatic or military capacity. In your request to the Designated Officer (see § 1068.305), include either written confirmation from the U.S. State Department that you qualify for this exemption or a copy of your orders for military duty in the United States. We will rely on the State Department or your military orders to determine when your diplomatic or military status expires, at which time you must export your exempt engines.

§ 1068.330 What are the penalties for violations?

(a) *All imported engines.* Unless you comply with the provisions of this subpart, importation of nonconforming engines is violation of sections 203 and 213(d) of the Act. You may then have to export the engines, or pay civil penalties, or both. The U.S. Customs Service may seize unlawfully imported engines.

(b) *Temporarily imported engines.* If you do not comply with the provisions of this subpart for a temporary exemption, you may forfeit the total amount of the bond in addition to the sanctions we identify in paragraph (a) of this section. We will consider an engine

to be exported if it has been destroyed or delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations. EPA or the U.S. Customs Service may offer you a grace period to allow you to export a temporarily exempted engine without penalty after the exemption expires.

Subpart E—Selective Enforcement Auditing

§ 1068.401 What is a selective enforcement audit?

(a) We may conduct or require you to conduct emission tests on your production engines in a selective enforcement audit. This requirement is independent of any requirement for you to routinely test production-line engines.

(b) If we send you a signed test order, you must follow its directions and the provisions of this subpart. We will tell you where to test the engines. This may be where you produce the engines or any other emission testing facility.

(c) If we select one or more of your engine families for a selective enforcement audit, we will send the test order to the person who signed the application for certification or we will deliver it in person.

(d) Within one working day of receiving the test order, notify the Designated Officer which test facility you have selected for emission testing.

(e) You must do everything we require in the audit without delay.

§ 1068.405 What is in a test order?

(a) In the test order, we will specify the following things:

(1) The engine family and configuration (if any) we have identified for testing.

(2) The engine assembly plant, storage facility, or (if you import the engines) port facility from which you must select engines.

(3) The procedure for selecting engines for testing, including a selection rate.

(4) The test procedures, duty cycles, and test points, as appropriate, for testing the engines to show that they meet emission standards.

(b) We may state that we will select the test engines.

(c) We may identify alternate engine families or configurations for testing in case we determine the intended engines are not available for testing or if you do not produce enough engines to meet the minimum rate for selecting test engines.

(d) We may include other directions or information in the test order.

(e) We may ask you to show us that you meet any additional requirements

that apply to your engines (closed cranks, for example).

(f) In anticipation of a potential audit, you may give us a list of your preferred engine families and the corresponding assembly plants, storage facilities, or (if you import the engines) port facilities from which we should select engines for testing. The information would only apply for a single model year, so it would be best to include this information in your application for certification. If you give us this list before we issue a test order, we will consider your recommendations, but we may select engines differently.

(g) If you also do routine production-line testing with the selected engine family in the same time period, the test order will tell you what changes you might need to make in your production-line testing schedule.

§ 1068.410 How must I select and prepare my engines?

(a) *Selecting engines.* Select engines as described in the test order. If you are unable to select test engines this way, you may ask us to approve an alternate plan, as long as you make the request before you start selecting engines.

(b) *Assembling engines.* Produce and assemble test engines using your normal production and assembly process for that engine family.

(1) Notify us directly if you make any change in your production, assembly, or quality control processes that might affect emissions between the time you receive the test order and the time you finish selecting test engines.

(2) If you do not fully assemble engines at the specified location, we will describe in the test order how to select components to finish assembling the engines. Assemble these components onto the test engines using your documented assembly and quality control procedures.

(c) *Modifying engines.* Once an engine is selected for testing, you may adjust, repair, prepare, or modify it or check its emissions only if one of the following is true:

(1) You document the need for doing so in your procedures for assembling and inspecting all your production engines and make the action routine for all the engines in the engine family.

(2) This subpart otherwise allows your action.

(3) We approve your action in advance.

(d) *Engine malfunction.* If an engine malfunction prevents further emission testing, ask us to approve your decision to either repair the engine or delete it from the test sequence.

(e) *Setting adjustable parameters.* Before any test, we may adjust or

require you to adjust any adjustable parameter to any setting within its physically adjustable range.

(1) We may adjust idle speed outside the physically adjustable range as needed until the engine has stabilized emission levels (see paragraph (e) of this section). We may ask you for information needed to establish an alternate minimum idle speed.

(2) We may make or specify adjustments within the physically adjustable range by considering their effect on emission levels, as well as how likely it is someone will make such an adjustment with in-use engines.

(f) *Stabilizing emission levels.* Before you test production-line engines, you may operate the engine to stabilize the emission levels. Using good engineering judgment, operate your engines in a way that represents the way production engines will be used. You may operate each engine for no more than the greater of two periods:

(1) 50 hours.

(2) The number of hours you operated your emission-data engine for certifying the engine family (see 40 CFR part 1065, subpart E).

(g) *Damage during shipment.* If shipping an engine to a remote facility for production-line testing makes necessary an adjustment or repair, you must wait until after the after the initial emission test to do this work. We may waive this requirement if the test would be impossible or unsafe, or if it would permanently damage the engine. Report to us, in your written report under § 1068.450, all adjustments or repairs you make on test engines before each test.

(h) *Shipping engines.* If you need to ship engines to another facility for testing, make sure the test engines arrive at the test facility within 24 hours after being selected. You may ask that we allow more time if you are unable to do this.

(i) *Retesting after invalid tests.* You may retest an engine if you determine an emission test is invalid. Explain in your written report reasons for invalidating any test and the emission results from all tests. If you retest an engine and, within ten days after testing, ask to substitute results of the new tests for the original ones, we will answer within ten days after we receive your information.

§ 1068.415 How do I test my engines?

(a) Use the test procedures in part 1065 of this chapter that apply to your engines to show they meet emission standards. The test order will give further testing instructions.

(b) If no test cells are available at a given facility, you may make alternate testing arrangements with our approval.

(c) Test at least two engines in each 24-hour period (including void tests). However, if your projected U.S. nonroad engine sales are less than 7,500 for the year, you may test a minimum of one engine per 24-hour period. If you request and justify it, we may approve a lower testing rate.

(d) Accumulate service on test engines at a minimum rate of 6 hours per engine during each 24-hour period. The first 24-hour period for service accumulation begins when you finish preparing an engine for testing. The minimum service accumulation rate does not apply on weekends or holidays. You may ask us to approve a lower service accumulation rate. Plan your service accumulation to allow testing at the rate specified in § 1068.415. Select engine operation for accumulating operating hours on your test engines to represent normal in-use engine operation for the engine family.

(e) Test engines in the same order you select them.

§ 1068.420 How do I know when my engine family does not comply?

(a) A failed engine is one whose final deteriorated test results exceed an applicable emission standard for any regulated pollutant.

(b) Continue testing engines until you reach a pass decision for all pollutants or a fail decision for one pollutant.

(c) You reach a pass decision when the number of failed engines is less than or equal to the pass decision number in Appendix A to this subpart for the total number of engines tested. You reach a fail decision when the number of failed engines is greater than or equal to the fail decision number in Appendix A to this subpart for the total number of engines you test. An acceptable quality level of 40 percent is the basis for the pass or fail decision.

(d) Consider test results in the same order as the engine testing sequence.

(e) If you reach a pass decision for one pollutant, but need to continue testing for another pollutant, we will disregard these later test results for the pollutant with the pass decision.

(f) Appendix A to this subpart lists multiple sampling plans. Use the sampling plan for the projected sales volume you reported in your application for the audited engine family.

(g) We may choose to stop testing after any number of tests.

(h) If we test some of your engines in addition to your own testing, we may decide not to include your test results

as official data for those engines if there is substantial disagreement between your testing and our testing. We will reinstate your data as valid if you show us that we made an error and your data are correct.

(i) If we rely on our test data instead of yours, we will notify you in writing of our decision and the reasons we believe your facility is not appropriate for doing the tests we require under this subpart. You may request in writing that we consider your test results from the same facility for future testing if you show us that you have made changes to resolve the problem.

§ 1068.425 What happens if one of my production-line engines exceeds the emission standards?

(a) If one of your production-line engines fails to meet one or more emission standards (see § 1068.420), the certificate of conformity is automatically suspended for that engine. You must take the following actions before your certificate of conformity can cover that engine:

(1) Correct the problem and retest the engine to show it complies with all emission standards.

(2) Include in your written report a description of the test results and the remedy for each engine (see § 1068.450).

(b) You may at any time ask for a hearing to determine whether the tests and sampling methods were proper (see § 1068.601).

§ 1068.430 What happens if an engine family does not comply?

(a) We may suspend your certificate of conformity for an engine family if it fails to comply under § 1068.420. The suspension may apply to all facilities producing engines from an engine family, even if you find noncompliant engines only at one facility.

(b) We will tell you in writing if we suspend your certificate in whole or in part. We will not suspend a certificate until at least 15 days after the engine family became noncompliant. The suspension is effective when you receive our notice.

(c) Up to 15 days after we suspend the certificate for an engine family, you may ask for a hearing to determine whether the tests and sampling methods were proper (see § 1068.601). If we agree before a hearing that we used erroneous information in deciding to suspend the certificate, we will reinstate the certificate.

§ 1068.435 May I sell engines from an engine family with a suspended certificate of conformity?

You may sell engines that you produce after we suspend the engine

family's certificate of conformity only if one of the following occurs:

(a) You test each engine you produce and show it complies with emission standards that apply.

(b) We conditionally reinstate the certificate for the engine family. We may do so if you agree to recall all the affected engines and remedy any noncompliance at no expense to the owner if later testing shows that the engine family still does not comply.

§ 1068.440 How do I ask EPA to reinstate my suspended certificate?

(a) Send us a written report asking us to reinstate your suspended certificate. In your report, identify the reason for noncompliance, propose a remedy, and commit to a date for carrying it out. In your proposed remedy include any quality control measures you propose to keep the problem from happening again.

(b) Give us data from production-line testing that shows the remedied engine family complies with all the emission standards that apply.

§ 1068.445 When may EPA revoke my certificate under this subpart and how may I sell these engines again?

(a) We may revoke your certificate for an engine family in the following cases:

(1) You do not meet the reporting requirements.

(2) Your engine family fails to meet emission standards and your proposed remedy to address a suspended certificate is inadequate to solve the problem or requires you to change the engine's design or emission-control system.

(b) To sell engines from an engine family with a revoked certificate of conformity, you must modify the engine family and then show it complies with the applicable requirements.

(1) If we determine your proposed design change may not control emissions for the engine's full useful life, we will tell you within five working days after receiving your report. In this case we will decide whether production-line testing will be enough for us to evaluate the change or whether you need to do more testing.

(2) Unless we require more testing, you may show compliance by testing production-line engines as described in this subpart.

(3) We will issue a new or updated certificate of conformity when you have met these requirements.

§ 1068.450 What records must I send to EPA?

(a) Within 30 calendar days of the end of each audit, send us a report with the following information:

TABLE A-2.—SAMPLING PLANS FOR DIFFERENT ENGINE FAMILY SALES VOLUMES—Continued

Stage*	AA		A		B		C		D	
	pass #	fail #	pass #	fail #	pass #	fail #	pass #	fail #	pass #	fail #
3	0	.....	.....	.....	.....	.....	.....	.....	.....	.....
4	0	.....	0	.....	.....	.....	.....	.....	.....	.....
5	1	5	0	.....	0	.....	0	.....	0	.....
6	1	6	1	6	1	6	0	6	0	6
7	2	6	1	7	1	7	1	7	1	7
8	2	7	2	7	2	7	2	7	2	8
9	3	7	2	8	2	8	2	8	2	8
10	3	8	3	8	3	8	3	9	3	9
11	4	8	3	8	3	9	3	9	3	9
12	4	9	4	9	4	9	4	10	4	10
13	5	9	5	10	4	10	4	10	4	10
14	5	10	5	10	5	10	5	11	5	11
15	6	10	6	11	5	11	5	11	5	11
16	6	10	6	11	6	12	6	12	6	12
17	7	10	7	12	6	12	6	12	6	12
18	8	10	7	12	7	13	7	13	7	13
19	8	10	8	13	8	13	7	13	7	13
20	9	10	8	13	8	14	8	14	8	14
21	.....	.....	9	14	9	14	8	14	8	14
22	.....	.....	10	14	9	15	9	15	9	15
23	.....	.....	10	15	10	15	10	15	9	15
24	.....	.....	11	15	10	16	10	16	10	16
25	.....	.....	11	16	11	16	11	16	11	16
26	.....	.....	12	16	11	17	11	17	11	17
27	.....	.....	12	17	12	17	12	17	12	17
28	.....	.....	13	17	12	18	12	18	12	18
29	.....	.....	14	17	13	18	13	18	13	19
30	.....	.....	16	17	13	19	13	19	13	19
31	.....	.....	.....	.....	14	19	14	19	14	20
32	.....	.....	.....	.....	14	20	14	20	14	20
33	.....	.....	.....	.....	15	20	15	20	15	21
34	.....	.....	.....	.....	16	21	15	21	15	21
35	.....	.....	.....	.....	16	21	16	21	16	22
36	.....	.....	.....	.....	17	22	16	22	16	22
37	.....	.....	.....	.....	17	22	17	22	17	23
38	.....	.....	.....	.....	18	22	18	23	17	23
39	.....	.....	.....	.....	18	22	18	23	18	24
40	.....	.....	.....	.....	21	22	19	24	18	24
41	.....	.....	.....	.....	.....	.....	19	24	19	25
42	.....	.....	.....	.....	.....	.....	20	25	19	26
43	.....	.....	.....	.....	.....	.....	20	25	20	26

TABLE A-2.—SAMPLING PLANS FOR DIFFERENT ENGINE FAMILY SALES VOLUMES—Continued

Stage*	AA		A		B		C		D	
	pass #	fail #	pass #	fail #	pass #	fail #	pass #	fail #	pass #	fail #
44							21	26	21	27
45							21	27	21	27
46							22	27	22	28
47							22	27	22	28
48							23	27	23	29
49							23	27	23	29
50							26	27	24	30
51									24	30
52									25	31
53									25	31
54									26	32
55									26	32
56									27	33
57									27	33
58									28	33
59									28	33
60									32	33

* Stage refers to the cumulative number of engines tested.

Subpart F—Defect Reporting and Recall

§ 1068.501 How do I report engine defects?

(a) As an engine manufacturer, if you learn that an emission-related defect exists in the number of engines identified as Number to Submit Defect Report in Table 1 of § 1068.501, you must send the Designated Officer a report within 15 working days and

follow the other instructions in this section. This requirement applies whether you learn of the defects from a method you established to track safety or performance characteristics, from the investigation procedures set forth in paragraph (d) of this section, or from any other information.

(1) Include each occurrence of the defect in the count of engines, rather than limiting it to individual engine families or a single model year.

(2) Include all defects you observe for the following periods:

(i) For engines with rated power under 225 kW, five years from the end of each engine's model year.

(ii) For engines with rated power 225 kW or greater, eight years from the end of each engine's model year.

(3) Count an engine even if you correct the defect before it reaches the ultimate buyer.

(4) Table 1 follows:

TABLE 1 OF § 1068.501.—NUMBER OF ENGINES FOR FILING REPORT OR COMMENCING INVESTIGATION

Number of engines in family	If component is anything but a catalyst		If component is a catalyst	
	Number to commence investigation	Number to submit defect report	Number to commence investigation	Number to submit defect report
10,000	400	25	200	13
20,000	800	50	400	25
30,000	1,200	75	600	38
40,000	1,600	100	800	50
50,000	2,000	125	1,000	63
60,000	2,400	150	1,200	75
70,000	2,800	175	1,400	88
80,000	3,200	200	1,600	100
90,000	3,600	225	1,800	113
100,000	4,000	250	2,000	125
200,000 or more	4000	250	2000	125

(b) Include the following information in your report (in this general outline format):

- (1) State your corporate name.
 - (2) Describe the defect.
 - (3) Describe which engines may have the defect, including engine model, range of production dates, purchaser, and any other information that may be needed to identify the affected engines.
 - (4) Estimate the number of each class or category of affected engines that have or may have the defect and explain how you determined this number.
 - (5) Identify where you produced each class or category of affected engines.
 - (6) Evaluate the emissions impact of the defect
 - (7) Describe any operational or performance problems a defective engine might have.
 - (8) Include any available emission data related to the defect.
 - (9) Describe your plan for addressing the defect.
- (c) If you revise or later obtain information required by paragraph (b) of this section, send it to us as it becomes available.
- (d) As an engine manufacturer, you must conduct an investigation to determine if an emission-related defect exists in the Number to Submit Defect Report or more of your engines as follows:

- (1) If any of the following contingencies occur you must start an investigation to determine if a defect exists in the Number to Submit Defect Report or more of your engines:
 - (i) The number of Federal warranty claims for a specific emission-related component is at the number identified as the Number to Commence an Investigation in Table 1 of this section. Federal warranty claims are warranty claims submitted pursuant to any warranty established under Title II of the Clean Air Act or other warranty applicable to an emission-related device or element of design as specified in Appendix VIII of 40 CFR part 85.
 - (ii) Systems you have for monitoring information from dealers, hot line complaints, or other information systematically submitted, indicates a higher than normal occurrence of potential defects in an emission-related component or element of design.
 - (iii) Any other information indicates that there may be a defect in an emission-related component or element of design.
- (2) If any of the contingencies set forth in paragraph (d)(1) of this section occur, then you shall promptly commence and conduct an investigation to determine if a specific emission-related defect exists and if it is present in the Number to

Submit Defect Report or more engines. The investigation shall be performed in a thorough manner, shall include consideration of all relevant information, and shall be conducted in accordance with scientific and engineering principles. Relevant information to be considered shall include information on design, function, rate of failure, use, and any other information available to you.

(3) If an investigation concludes with the determination that there is not an emission-related defect in at least as many engines as the Number to Submit Defect Report, then you shall make a determination whether to commence a continued investigation. A continued investigation should be commenced if there is an indication that there may be new information which would indicate the existence of an emission-related defect in the Number to Submit Defect Report or more engines.

(4) Even if an investigation is being conducted or in any other event, if you have actual knowledge of an emission-related defect in the Number to Submit Defect Report or more of your engines, you must timely submit a report to the Designated Officer, as set forth in paragraph (a) of this section.

§ 1068.505 How does the recall program work?

(a) If we determine that a substantial number of properly maintained and used engines do not meet the requirements of this chapter throughout their useful life, we will tell you in writing. Our notice will identify the class or category of engines affected and describe how we reached our conclusion. If this happens, you must meet the requirements and follow the instructions in this subpart. You must remedy at your expense noncompliant engines that have been properly maintained and used. You may not transfer this expense to a dealer or equipment manufacturer through a franchise or other agreement.

(b) You may ask for a hearing if you disagree with our determination (see § 1068.601)

(c) Unless we withdraw the determination of noncompliance, you must respond to it by sending a remedial plan to the Designated Officer by the later of these two deadlines:

- (1) Within 60 days after we notify you.
- (2) Within 60 days after a public hearing.
- (d) If you learn that your engine family does not meet the requirements of this chapter and we have not ordered you to recall noncomplying engines,

you may voluntarily recall them, as described in § 1068.535.

(e) Once you have sold an engine to the ultimate purchaser, we may inspect or test the engine only if he or she permits it, or if state or local inspection programs separately provide for it.

§ 1068.510 How do I prepare and apply my remedial plan?

(a) In your remedial plan, describe all of the following:

(1) The class or category of engines to be recalled, including the number of engines involved and the model year or other information needed to identify the engines.

(2) The modifications, alterations, repairs, corrections, adjustments, or other changes you will make to correct the affected engines.

(3) A brief description of the studies, tests, and data that support the effectiveness of the remedy you propose to use.

(4) The instructions you will send to those who will repair the engines under the remedial plan.

(5) How you will determine the owners' names and addresses.

(6) How you will notify owners; include copies of any notification letters.

(7) The proper maintenance or use you will specify, if any, as a condition to be eligible for repair under the remedial plan. Describe how owners should show they meet your conditions.

(8) The steps owners must take for you to do the repair. You may set a date or a range of dates, specify the amount of time you need, and designate certain facilities to do the repairs.

(9) Which company (or group) you will assign to do or manage the repairs.

(10) If your employees or authorized warranty agents will not be doing the work, state who will and say they can do it.

(11) How you will ensure an adequate and timely supply of parts.

(12) The effect of proposed changes on fuel consumption, driveability, and safety of the engines you will recall; include a brief summary of the information supporting these conclusions.

(13) How you intend to label the engines you repair and where you will place the label on the engine (see § 1068.515).

(b) We may require you to add information to your remedial plan.

(c) We may require you to test the proposed repair to show it will remedy the noncompliance.

(d) Use all reasonable means to locate owners. We may require you to use government or commercial registration

lists to get owners' names and addresses, so your notice will be effective.

(e) The maintenance or use that you specify as a condition for eligibility under the remedial plan may include only things you can show would cause noncompliance. Do not require use of a component or service identified by brand, trade, or corporate name, unless we approved this approach with your original certificate of conformity. Also, do not place conditions on who maintained the engine.

(f) We may require you to adjust your repair plan if we determine owners would be without their engines or equipment for an unreasonably long time.

(g) We will tell you in writing within 15 days of receiving your remedial plan whether we have approved or disapproved it. We will explain our reasons for any disapproval.

(h) Begin notifying owners within 15 days after we approve your remedial plan. If we hold a public hearing, but do not change our position about the noncompliance, you must begin notifying owners within 60 days after we complete the hearing, unless we specify otherwise.

§ 1068.515 How do I mark or label repaired engines?

(a) Attach a label to each engine you repair under the remedial plan. At your discretion, you may label or mark engines you inspect but do not repair.

(b) Make the label from a durable material suitable for its planned location. Make sure no one can remove the label without destroying it.

(c) On the label, designate the specific recall campaign and state where you repaired or inspected the engine.

(d) We may waive or modify the labeling requirements if we determine they are overly burdensome.

§ 1068.520 How do I notify affected owners?

(a) Notify owners by first class mail, unless we say otherwise. We may require you to use certified mail. Include the following things in your notice:

(1) State: "The U.S. Environmental Protection Agency has determined that your engine may be emitting pollutants in excess of the Federal emission standards, as defined in Title 40 of the Code of Federal Regulations. These emission standards were established to protect the public health or welfare from air pollution."

(2) State that you (or someone you designate) will repair these engines at your expense.

(3) If we approved maintenance and use conditions in your remedial plan, state that you will make these repairs only if owners show their engines meet the conditions for proper maintenance and use. Describe these conditions and how owners should prove their engines are eligible for repair.

(4) Describe the components your repair will affect and say generally how you will repair the engines.

(5) State that the engine, if not repaired, may fail an emission inspection test if state or local law requires one.

(6) Describe how not repairing the engine will harm its performance or driveability.

(7) Describe how not repairing the engine will harm the functions of other engine components.

(8) Specify the date you will start the repairs, the amount of time you will need to do them, and where you will do them. Include any other information owners may need to know.

(9) Include a self-addressed card that owners can mail back if they have sold the engine (or equipment in which the engine is installed); include a space for owners to write the name and address of a buyer.

(10) State that owners should call you at a phone number you give to report any difficulty in obtaining repairs.

(11) State: "To ensure your full protection under the emission warranty on your engine by federal law, and your right to participate in future recalls, we recommend you have your engine serviced as soon as possible. We may consider your not servicing it to be improper maintenance."

(b) We may require you to add information to your notice or to send more notices.

(c) You may not in any communication with owners or dealers say or imply that your noncompliance does not exist or that it will not degrade air quality.

§ 1068.525 What records must I send to EPA?

(a) Send us a copy of all communications related to the remedial plan you sent to dealers and others doing the repairs. Mail or e-mail us the information at the same time you send it to others.

(b) From the time you begin to notify owners, send us a report within 25 days of the end of each calendar quarter. Send reports for six consecutive quarters or until all the engines are inspected, whichever comes first. In these reports, identify the following:

(1) The range of dates you needed to notify owners.

(2) The total number of notices sent.

(3) The number of engines you estimate fall under the remedial plan (explain how you determined this number).

(4) The cumulative number of engines you inspected under the remedial plan.

(5) The cumulative number of these engines you found needed the specified repair.

(6) The cumulative number of these engines you have repaired.

(7) The cumulative number of engines you determined to be unavailable due to exportation, theft, retirement, or other reasons (specify).

(8) The cumulative number of engines you disqualified for not being properly maintained or used.

(c) If your estimated number of engines falling under the remedial plan changes, change the estimate in your next report and add an explanation for the change.

(d) We may ask for more information.

(e) We may waive reporting requirements or adjust the reporting schedule.

(f) If anyone asks to see the information in your reports, we will follow the provisions of § 1068.10 for handling confidential information.

§ 1068.530 What records must I keep?

We may review your records at any time, so it is important that you keep required information readily available. Keep records associated with your recall campaign for three years after you complete your remedial plan. Organize and maintain your records as described in this section.

(a) Keep a paper copy of the written reports described in § 1068.525.

(b) Keep a record of the names and addresses of owners you notified. For each engine, state whether you did any of the following:

(1) Inspected the engine.

(2) Disqualified the engine for not being properly maintained or used.

(3) Completed the prescribed repairs.

(c) You may keep the records in paragraph (b) of this section in any form we can inspect, including computer databases.

§ 1068.535 How can I do a voluntary recall for emission-related problems?

(a) To do a voluntary recall, first send the Designated Officer a plan, following the guidelines in § 1068.510. Within 15 days, we will send you our comments on your plan.

(b) Once we approve your plan, start notifying owners and carrying out the specified repairs.

(c) From the time you start the recall campaign, send us a report within 25

days of the end of each calendar quarter, following the guidelines in § 1068.525(b). Send reports for six consecutive quarters or until all the engines are inspected, whichever comes first.

(d) Keep your reports and the supporting information as described in § 1068.530.

§ 1068.540 What terms do I need to know for this subpart?

The following terms apply to this subpart:

Days means calendar days.

Owner means someone who owns an engine affected by a remedial plan or someone who owns a piece of equipment that has one of these engines.

Subpart G—Public Hearings

§ 1068.601 How do I request a public hearing?

(a) File a request for a hearing with the Designated Officer within 15 days of a decision to suspend, revoke, or void your certificate or within 30 days after we send you our conclusions for rejecting your use of good engineering judgment. If you ask later, we may give you a hearing for good cause, but we do not have to.

(b) Include the following in your request for a public hearing:

(1) State which engine family is involved.

(2) State the issues you intend to raise. We may limit these issues, as described elsewhere in the regulations.

(3) Summarize the evidence supporting your position and state why you believe this evidence justifies reinstating the certificate.

(c) We will hold the hearing as described in this subpart.

§ 1068.605 How will EPA set up a public hearing?

(a) A Presiding Officer and one or more Judicial Officers will hold public hearings.

(b) Presiding Officers must be an administrative law judge appointed according to 5 U.S.C. 3105 (see also 5 CFR part 930, as amended).

(c) The Administrator will appoint EPA employees as Judicial Officers. Judicial Officers must meet the following qualifications and perform the following functions:

(1) *Qualifications.* Judicial Officers may be permanent or temporary employees of EPA who handle other duties for the Agency. Judicial Officers may not be employed by the Office of Enforcement and Compliance Assurance or have any connection with preparing or presenting evidence for any hearing held under this section. Judicial Officers

must be graduates of an accredited law school and members 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 Officers or delegate all or part of the Administrator's authority to act under this section to the Officers. But the Officers must be able to refer any motion or case to the Administrator whenever appropriate.

(d) We may determine that your request for a hearing does not raise a genuine, substantial question of fact or law concerning suspension of your certificate of conformity. If so, we may enter an order denying your request and reaffirm the suspension or revocation. This order has the force and effect of the Administrator's final decision.

(1) In the case of emission levels causing an engine family to be noncompliant, you may question only our decision on whether the tests and sampling methods were proper.

(2) In the case of violations of prohibited acts, you may question only our decision on whether conditions or circumstances outside your control caused your refusal to comply with the requirements of this chapter.

(e) If we determine you have raised a genuine, substantial question of fact or law under paragraphs (d)(1) and (d)(2) of this section, we will grant your request for a hearing. We will tell the public by publishing a notice in the *Federal Register* or by some other appropriate means.

(f) File with our Hearing Clerk an original and two copies of all documents or papers you must (or may) file. Your filing is timely if you deliver or postmark items within the time this section and any other regulations allow. We will give you an address for filing materials with the Hearing Clerk.

(g) Present testimony in writing as much as possible. We will give everyone copies of written testimony as soon as we can before the hearing starts. We will provide a certificate of service for each document or paper filed with the Hearing Clerk. If you need to give something to the Designated Officer, send it by registered mail (see § 1068.25).

(h) In computing any period of time for this section, do not include the day of the act or event. Include Saturdays, Sundays, and federal legal holidays, but when the period expires on one of these days, extend it to include the next business day. If you must or may do something within a prescribed period, compute this period from the time we notify you, unless we notify you by

mail. For notices by mail, add three days to the prescribed period.

(i) The Administrator or Presiding Officers may consolidate two or more proceedings held under this section to speed or simplify resolving one or more issues. You may still raise issues that you could have raised if we did not consolidate proceedings.

(j) As much as possible, we will schedule public hearings to start within 14 days after we receive a request for a hearing.

§ 1068.610 What are the procedures for a public hearing?

(a) *Presiding Officers.* Presiding Officers must hold fair and impartial hearings under the Administrative Procedure Act (5 U.S.C. 554, 556, and 557); dispose of the proceedings as soon as possible; and maintain order. They have power consistent with the Administrative Procedure Act, including the power to do the following:

(1) Administer oaths and affirmations.

(2) Rule on offers of proof and exclude irrelevant or repetitious material.

(3) Regulate the course of the hearing and the conduct of the parties and their counsel.

(4) Hold conferences.

(5) Consider and rule on all procedural and other motions in the hearing.

(6) Require submission of direct written testimony with or without affidavit whenever, in their opinion, oral testimony is not necessary for full and true disclosure of the facts.

(7) Enforce agreements and orders requiring access as authorized by law.

(8) Require the filing of briefs on any matter on which they must rule.

(9) Require any party or witness to state a position on any issue during the hearing.

(10) Depose witnesses or require depositions.

(11) Resolve or recommend resolution for disputed issues on the hearing's record.

(12) Issue protective orders, as described in paragraph (g) of this section, based on good cause.

(b) *Accelerated decision or dismissal.* Presiding Officers may accelerate decisions on all or part of the proceeding, without further hearing or with limited additional evidence (such as affidavits they may require). They may also dismiss any party with prejudice.

(1) Presiding Officers may decide in favor of EPA or you (as manufacturer), based on any party's motion or their own judgment, for any of the following reasons:

(i) Failure to state a claim on which relief can be granted or stating

something that contradicts a previous statement.

(ii) The lack of any genuine, material issue, so a party is entitled to judgment as a matter of law.

(iii) Failure to obey a procedural order of the Presiding Officer.

(iv) Other just reasons.

(2) A Presiding Officer's accelerated decision on all the issues and claims in the proceeding is equal to the decision described in paragraph (1) of this section.

(3) For accelerated decisions on less than all issues or claims in the proceeding, the Presiding Officers must determine without substantial controversy which material facts exist and which are in good faith controverted. Then, they issue an order specifying the facts that are without substantial controversy, as well as the issues and claims on which the hearing will continue.

(c) *Amicus curiae* (friend of the court). Participants in the hearing may move that the Presiding Officer allow a brief from a friend of the court—someone who is not a participant. Anyone who asks for an amicus brief must identify his or her interest and state why the brief is desirable. The Presiding Officer may then accept briefs from someone who is not a party to the proceeding.

(d) *Conferences*. Presiding Officers may hold conferences before ordering any hearing. They direct the Hearing Clerk to tell participants the time and location of conferences. At the Presiding Officer's discretion, other people also may attend. They summarize in writing the results of conferences, including all stipulations not transcribed, and summaries part of the record. At a conference, Presiding Officers may do any of the following:

(1) Get stipulations and admissions, receive requests, order depositions to be taken, identify disputed issues of fact and law, and require or allow any witness or party to submit written testimony.

(2) Set a hearing schedule for oral and written statements, submission of written direct testimony, oral direct examination and cross-examination of a witness, or oral argument as they consider necessary.

(3) Identify matters for official notice.

(4) Limit the number of expert and other witnesses.

(5) Establish the procedures for the hearing.

(6) Take any other action that may speed the hearing or help resolve the issue.

(e) *Primary discovery*. At a prehearing conference or at some other time a Presiding Officer sets before the hearing,

all parties must make available to the other parties the names of the expert and other witnesses they expect to call, a brief summary of their expected testimony, and a list of all documents and exhibits they expect to introduce into evidence. After that, a party may move to add exhibits or amend expected testimony. If anyone makes a motion showing good cause, Presiding Officers may restrict or defer disclosure of the name of a witness or a narrative summary of the witness's expected testimony. They also may prescribe other measures to protect a witness. If restricted or deferred disclosure affects a party, they will allow enough time to prepare for presenting that case.

(f) *Other discovery*. Presiding Officers may allow further discovery. If so, they issue orders for taking the discovery, including terms and conditions.

(1) Any party may move for further discovery, as long as the motion includes reasons, the nature of the information discovery will produce, and the proposed time and place for it.

(2) Presiding Officers may approve motions for further discovery if they determine it will not unreasonably delay the proceeding, is the only way to get the information, and is significant to the case. Presiding Officers follow procedures in the Federal Rules of Civil Procedure (28 U.S.C.) and its precedents whenever possible. But no one can take discovery unless a Presiding Officer orders it or all the parties agree to it.

(3) If someone does not comply with an order issued under this paragraph (f), we may infer that the discovery information would harm that person.

(g) *Protective orders for private discovery*. Presiding Officers may enter protective orders to allow a person to testify or disclose information in private, rather than in open hearing.

(1) For this to occur, a party or the person giving discovery information must move for a protective order by showing that some of the discovery information would reveal methods or processes entitled to protection as trade secrets. This information may not include emission data. Any party wanting to use private documents or testimony to present a case must so move to the Presiding Officer with supporting justification.

(2) Presiding Officers may permit anyone seeking a protective order to disclose information in private. They will record the private proceeding. If they enter a protective order following a private session, they will seal and preserve the record and make it available to EPA or the court if anyone appeals. The Presiding Officer may limit attendance at any private proceeding to

himself or herself, EPA, and the person or party seeking the protective order.

(3) If Presiding Officers grant a motion for a protective order, they enter an order that governs treatment of the information to protect the parties' rights and prevent unnecessary disclosure. Procedures also cover presentation of the information and oral testimony and related cross-examination in executive session. The protective order must also state that the material will be filed separately from other evidence and exhibits in the hearing.

(4) Disclosing this information is 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. Disclosure by government employees must follow 18 U.S.C. 1905. For all others, disclosure may be limited to counsel if the parties do not have to know the information. Parties or their counsel must sign a sworn statement that they will not disclose information to persons not entitled to receive it under the protective order's terms.

(5) In the submittal of proposed findings, briefs, or other papers, counsel for all parties must try in good faith not to disclose the specific details of private documents and testimony. But they may refer to the documents or testimony and speak generally about their contents. If lawyers consider specific details necessary to their presentations, they will place the details in separate proposed findings, briefs, or other paper marked "confidential." These confidential papers will become part of the private record.

(h) *Motions*. All motions, except those made orally during the hearing, must be in writing. Parties must state the grounds for the motion, describe the relief or order sought, file the motion with the Hearing Clerk, and serve it on all parties.

(1) Within the time fixed by the Environmental Appeals Board or Presiding Officers, as appropriate, any party may serve and file an answer to the motion. The Environmental Appeals Board or Presiding Officers may then require the person who made the motion to file reply papers within a specified time.

(2) Presiding Officers rule on all motions filed or made before they file their decisions (or accelerated decisions). The Environmental Appeals Board rules on all motions filed before Presiding Officers are appointed and on all motions filed after Presiding Officers issue decisions. Presiding Officers or the Environmental Appeals Board approve

oral arguing of motions only when necessary.

(i) *Evidence.* Evidence consists of official transcripts and exhibits, together with all papers and requests filed in the proceeding. Presiding Officers will separate and exclude immaterial or irrelevant parts of an admissible document whenever possible. They will also separate documents (or parts of documents) subject to a protective order under paragraph (g) of this section. They may allow evidence at the hearing even though it is inadmissible under the rules of evidence for judicial proceedings. The weight of evidence depends on its reliability and how well it proves a case. Presiding Officers allow parties to examine and cross-examine witnesses as much as necessary for a full disclosure of the facts. Their rulings on admissibility of evidence, propriety of examination and cross-examination, and other procedural matters will appear in the record. We automatically assume parties have taken exception to an adverse ruling.

(j) *The record.* The record consists of official transcripts and exhibits, together with all paper and requests filed in the proceeding. Stenographers will report and transcribe hearings; the original transcripts are part of the record and are the sole official transcript. We will file copies of the record with the Hearing Clerk and make them available during our business hours for public inspection. We may charge a reasonable fee for the service, but may deny a request to see information only based on paragraph (g) of this section.

(k) *Proposed findings and conclusions.* Within four days after the proceedings are closed to new evidence, any party may submit for the Presiding Officer's consideration proposed findings of fact, conclusions of law, or a proposed order, with supporting reasons and briefs. The Presiding Officer may allow a longer time for these proposals. Parties must put these proposals in writing, serve them on all parties, and make sure they contain clear references to the record and other authorities. The record shows the Presiding Officer's ruling on the proposed findings and conclusions, except when the disposal order for the proceeding otherwise informs the parties of these actions.

(l) *Presiding Officer's decisions.* Presiding Officers issue and file decisions with the Hearing Clerk within fourteen days after the period for filing proposed findings (see paragraph (k) of this section). For hearings that challenge an initial suspension of a certificate of conformity, decisions are due within seven days after the period for filing

proposed findings. The Environmental Appeals Board may extend the deadline for these decisions.

(1) Decisions must state findings and conclusions on all the material issues of fact or law in the record, with supporting reasons or basis, and an appropriate rule or order. Evidence and consideration of the whole record must support the decision.

(2) Decisions by Presiding Officers become the Environmental Appeals Board's decisions at one of the following times, unless the Board acts to review or stay the effective date of a decision during these periods:

(i) Ten days after the deadlines to appeal, as described in § 1068.615(a) or (b), if no one files a notice of intent to appeal.

(ii) Five days after the deadline to perfect an appeal, as described in § 1068.615(a) or (b), if someone files a notice of intent to appeal but does not perfect the appeal.

(3) At any time before Presiding Officers issue decisions, they may reopen proceedings to receive further evidence.

(4) Except for correcting clerical errors, the Presiding Officers' jurisdiction ends when they issue their decisions.

§ 1068.615 How do I appeal a hearing decision?

(a) *Appeal from the decisions of Presiding Officers.* Any party to a proceeding may appeal these decisions to the Environmental Appeals Board. In all cases except our initial suspension of a certificate of conformity, you must file your notice of intent to appeal within ten days after the Presiding Officer issues a decision. You must perfect your appeal with an appeal brief within twenty days of the decision. Any other party may then file a brief on your appeal within fifteen days of the date you file your brief. All briefs must be 40 pages or less, unless the Environmental Appeals Board approves otherwise. The Board also may allow oral arguments. Your brief must contain the following items in this order:

(1) A subject index of the matter in the brief, with page references, plus a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references.

(2) Specific issues you intend to urge (but see regulations in this chapter defining emission standards for the engines in question, which may limit the range of issues you consider).

(3) Your argument presenting the points of fact and law supporting the position you have taken on each issue, with page references to the record and

legal or other material you are relying on.

(4) A proposed order for the Environmental Appeals Board's consideration, if it is different from the order in the Presiding Officer's decision.

(b) *Appeal of decisions on a suspended certificate of conformity.* In this case, you may appeal the Presiding Officer's decision to the Environmental Appeals Board by filing a notice of appeal within ten days of the decision. Make your notice of appeal a brief that meets the requirements in paragraph (a) of this section. Within ten days after you file a notice of appeal under this paragraph, any other party may file a brief on that appeal. All briefs must be 15 pages or less unless the Environmental Appeals Board approves otherwise.

(c) *Review of the Presiding Officer's decision in the absence of appeal.* The hearing Clerk tells the Environmental Appeals Board if no one has filed a notice of intent to appeal the Presiding Officer's decision by the deadline, or has filed notice but not perfected it. The Environmental Appeals Board may then review the decision on its own motion, within the time limits in § 1068.610(l). The Board must tell all parties that they intend to review the decision, describe the scope of their review, and allow for filing briefs.

(d) *Decision of appeal or review by the Environmental Appeals Board.* The Board considers the record as needed to resolve issues under appeal or review. They also may use all the powers they could have used if they had presided at the hearing. They adopt, modify, or set aside the Presiding Officer's findings, conclusions, and order and state the reasons or basis for their action in the decision. If the Board determines they need more information or the parties' views on the rule or order they are issuing, they may wait until they receive them or send the case back to the Presiding Officer. Any decision under this paragraph (d) that disposes of a case is the Board's final decision.

(e) *Reconsideration of the Environmental Appeals Board's decision.* Within 20 days of the Board's decision, you may file a petition with the Board to reconsider their decision.

(1) Your petition must describe the relief you want and the grounds supporting it. Limit your petition to new questions raised by the decision or final order and only those you did not have the chance to argue before the Presiding Officer or the Board. See the regulations in this chapter defining emission standards for the engines in question, which may further limit the questions the Board will review.

(2) Anyone wanting to oppose this petition may file a response within ten days after you file it.

(3) Your petition for reconsideration does not stay the effective date of the decision or order. It also does not start any statutory time period affecting the decision or order, unless the Environmental Appeals Board orders that it does.

§ 1068.620 How does a hearing conclude?

(a) *Conclusion of hearing.* (1) The hearing ends after all periods allowed for appeal and review if no one appeals the Presiding Officer's decision and the Environmental Appeals Board does not move to review the decision by the specified deadlines.

(2) The hearing ends when the Environmental Appeals Board issues a final decision if someone appeals or the Board decides to review the Presiding Officer's decision.

(b) *Judicial review.* If you want to petition for judicial review, you must serve the petition on EPA's General Counsel. We will then tell you the costs involved. After we receive your payment to cover fees, we will forward your petition to the court where the Environmental Appeals Board filed its order.

Appendix I to Part 1068—Emission Related Components, 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).
3. 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—spark-ignition engines.
 - a. Control parameters and calibrations.
 - b. Idle mixture.
 - c. Fuel shutoff system calibration.
 - d. Starting enrichment system calibration.
 - e. Transient enrichment system calibration.
 - f. Air-fuel flow calibration.
 - g. Altitude compensation system calibration.

h. Operating pressure(s).

- i. Injector timing calibration.
4. Fuel injection—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—Spark-Ignition Engines.

1. Control parameters and calibration.
2. Initial timing setting.
3. Dwell setting.
4. Altitude compensation system calibration.
5. Spark plug voltage.

V. Engine Cooling System.

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.

[FR Doc. 01-23591 Filed 10-4-01; 8:45 am]

BILLING CODE 6560-50-P



Federal Register

Friday,
October 5, 2001

Part III

Department of the Interior

Fish and Wildlife Service

**Notice of Availability; Draft
Environmental Impact Statement on Light
Goose Management**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Availability; Draft Environmental Impact Statement on Light Goose Management**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability for public comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a Draft Environmental Impact Statement (DEIS) which is available for public review. The DEIS analyzes the potential environmental impacts of several management alternatives for addressing problems associated with overabundant light goose populations. The analysis provided in the DEIS is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comment received during the scoping period; and disclose the direct, indirect, and cumulative environmental effects of the proposed actions and each of the alternatives. The Service invites the public to comment on the DEIS.

DATES: Written comments on the DEIS must be received on or before November 28, 2001.

ADDRESSES: Requests for copies of the DEIS should be mailed to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, DC 20240. Copies of the DEIS can be downloaded from the Division of Migratory Bird Management web site at <http://migratorybirds.fws.gov/issues/snowgse/tblcont.html>. Comments on the DEIS should be sent to the above address. Alternatively, comments may be

submitted electronically to the following address:
white_goose_eis@fws.gov.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, (703) 358-1714; or James Kelley (612) 713-5409.

SUPPLEMENTARY INFORMATION: On May 13, 1999, a notice was published in the *Federal Register* (64 FR 26268) announcing that the Service intended to prepare an Environmental Impact Statement addressing problems associated with overabundant light goose populations. Comments were received and considered and are reflected in the DEIS made available for comment through this notice. This notice is provided pursuant to Fish and Wildlife Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Several public hearings will be held throughout the country during the comment period to solicit oral comments from the public. The dates and locations of these hearings are yet to be determined. A notice of public meetings with the locations, dates, and times will be published in the *Federal Register*.

In order to be considered, electronic submission of comments must include your name and postal mailing address; we will not consider anonymous comments. All comments received, including names and addresses, will become part of the public record. The public may inspect comments during normal business hours in Room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act

regulations [40 CFR 1506.6(f)]. Our practice is to make comments available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

The DEIS evaluates four management alternatives to address habitat destruction and agricultural depredations caused by light geese on various breeding, migration, and wintering areas: (1) No Action or a continuation to manage light goose populations through existing wildlife management policies and practices (Alternative A); (2) modify harvest regulation options and refuge management (Alternative B) (PROPOSED); (3) implement direct agency control of light goose populations on migration and wintering areas in the U.S. (Alternative C); (4) seek direct light goose population control on breeding grounds in Canada (Alternative D). Our proposed alternative (Alternative B) modifies existing light goose hunting regulations to expand methods of take during normal hunting season frameworks. In addition, we propose to create a conservation order to allow take of light geese outside of normal hunting season frameworks. We would also modify management practices on certain National Wildlife Refuges to alter the availability of food and sanctuary to light geese.

Dated: September 28, 2001.

Marshall P. Jones, Jr.,
Acting Director.

[FR Doc. 01-24775 Filed 10-4-01; 8:45 am]

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Federal Register

Friday
October 5, 2001

Part IV

Environmental Protection Agency

Forty-Eighth Report of the TSCA
Interagency Testing Committee to the
Administrator, Receipt of Report and
Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-41056; FRL-6786-7]

Forty-Eighth Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Forty-Eighth Report to the Administrator of the EPA on May 15, 2001. In the 48th ITC Report, which is included with this notice, the ITC adds 5 "chlorinated trihalomethyl pyridines," 2 "trihaloethylidene bisbenzenes," 3-chlorotrifluralin, and 4 "trichlorophenylidihydropyrazols" to its *Priority Testing List* and solicits voluntary information for these chemicals under the ITC's Voluntary Information Submissions Policy (VISP). This action is part of the ITC's ongoing effort to evaluate chemicals with potential to persist and bioconcentrate, and with suspicions of toxicity and few data. In this Report, the ITC also removes 22 alkylphenols and ethoxylates, methylal, and ethyl silicate from its *Priority Testing List* and requests that EPA promulgate TSCA section 8(d) health and safety data reporting rules for 3-amino-5-mercapto-1,2,4-triazole and glycoluril.

DATES: Comments, identified by docket control number OPPTS-41056, must be received on or before November 5, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS-41056 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: John D. Walker, ITC Executive Director (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone

number: (202) 564-7527; fax: (202) 564-7528; e-mail address: walker.johnd@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information****A. Does this Action Apply to Me?**

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

You may also access additional information about the ITC and the TSCA testing program through the web site for the Office of Prevention, Pesticides and Toxic Substances (OPPTS) at <http://www.epa.gov/opptsfrs/home/opptsim.html/>, or go directly to the ITC home page at <http://www.epa.gov/opptintr/itc/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS-41056. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of

the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260-7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS-41056 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260-7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS-41056. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the ITC's 48th Report. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Offer alternatives for improvement.
6. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

TSCA (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of the EPA to promulgate regulations under section 4(a) of TSCA requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of the EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

A. The 48th ITC Report

The 48th ITC Report was transmitted to the EPA's Administrator on May 15, 2001, and is included in this notice.

In the 48th ITC Report, the ITC:

1. Adds 5 "chlorinated trihalomethyl pyridines," 2 "trihaloethylidene bisbenzenes," 3-chlorotrifluralin, and 4 "trichlorophenyldihydropyrazols" to its *Priority Testing List* and solicits voluntary information for these chemicals under the ITC's VISP. This action is part of the ITC's ongoing effort to evaluate chemicals with potential to persist and bioconcentrate, and with suspicions of toxicity and few data.
2. Removes 22 alkylphenols and ethoxylates, methylal, and ethyl silicate from its *Priority Testing List*.
3. Requests that EPA promulgate TSCA section 8(d) health and safety data reporting rules for 3-amino-5-mercapto-1,2,4-triazole and glycoluril.

B. Status of the Priority Testing List

The current TSCA 4(e) *Priority Testing List* as of May 2001 can be found in Table 1 of the 48th ITC's Report which is included in this notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: September 26, 2001.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Forty-Eighth Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

Table of Contents

Summary

- I. Background
- II. TSCA Section 8 Reporting
 - A. TSCA Section 8 Reporting Rules
 - B. ITC's Use of TSCA Section 8 and Other Information
 - C. Promoting More Efficient Use of Information Submission Resources
 - D. Coordinating Information Requests
 - E. Requests to Promulgate TSCA Section 8(a) PAIR and Section 8(d) HaSD Reporting Rules
- III. ITC's Activities During this Reporting Period (November 2000 to April 2001)

IV. Revisions to the TSCA Section 4(e) *Priority Testing List*

A. Chemicals Added to the *Priority Testing List*

1. Chlorinated trihalomethyl pyridines
2. Trihaloethylidene bisbenzenes
3. 3-Chlorotrifluralin
4. Trichlorophenyldihydropyrazols

B. Chemicals Removed From the *Priority Testing List*

1. Alkylphenols and alkylphenol ethoxylates
2. Methylal
3. Ethyl silicate

V. References

VI. TSCA Interagency Testing Committee

SUMMARY

This is the 48th Report of the TSCA Interagency Testing Committee (ITC) to the Administrator of the U.S. Environmental Protection Agency (USEPA). In this Report, the ITC is adding 5 chlorinated trihalomethyl pyridines, 2 trihaloethylidene bisbenzenes, 3-chlorotrifluralin, and 4 trichlorophenyldihydropyrazols to its *Priority Testing List* and soliciting voluntary information for these chemicals under the ITC's Voluntary Information Submissions Policy (VISP). This action is part of the ITC's ongoing effort to evaluate chemicals with suspicions of toxicity and few data and potential to persist and bioconcentrate. In this Report, the ITC is removing 22 alkylphenols and ethoxylates and methylal and ethyl silicate from its *Priority Testing List*. The ITC is removing 22 alkylphenols and ethoxylates from its *Priority Testing List* because domestic production or importation volumes were not reported to the USEPA in response to 1986, 1990, 1994, and 1998 TSCA section 8(a) Information Update Rules (IURs) and in response to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule published in the **Federal Register** of July 5, 2000 (65 FR 41371 (FRL-6589-1)). The ITC is removing methylal and ethyl silicate from its *Priority Testing List* because data are being developed under the USEPA's High Production Volume (HPV) Challenge Program. The revised TSCA section 4(e) *Priority Testing List* follows as Table 1.

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (MAY 2001)

Report	Date	Chemical/group	Action
28	May 1991	Chemicals with Low Confidence Reference Dose (RfD) Acetone Thiophenol	Designated
30	May 1992	5 Siloxanes	Recommended
31	January 1993	13 Chemicals with insufficient dermal absorption rate data	Designated

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (MAY 2001)—Continued

Report	Date	Chemical/group	Action
32	May 1993	16 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	12 Alkylphenols and alkylphenol ethoxylates	Recommended
39	November 1996	8 Nonylphenol ethoxylates	Recommended
41	November 1997	7 Alkylphenols and alkylphenol ethoxylates	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4-triazole	Recommended
42	May 1998	Glycoluril	Recommended
46	May 2000	8 Nonylphenol polyethoxylate degradation products	Recommended
47	November 2000	37 Indium chemicals	Recommended
47	November 2000	Pentachlorothiophenol	Recommended
47	November 2000	Tetrachloropyrocatechol	Recommended
47	November 2000	<i>p</i> -Toluidine, 5-chloro- α,α,α -trifluoro-2-nitro- <i>N</i> -phenyl	Recommended
47	November 2000	Benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-, 2-ethoxy-1-methyl-2-oxoethyl ester.	Recommended
47	November 2000	3 Chloroalkenes	Recommended
48	May 2001	5 Chlorinated trihalomethyl pyridines	Recommended
48	May 2001	2 Trihaloethylidene bisbenzenes	Recommended
48	May 2001	3-Chlorotrifluralin	Recommended
48	May 2001	4 Trichlorophenyldihydropyrazols	Recommended

I. Background

The ITC was established by section 4(e) of the Toxic Substances Control Act (TSCA) "to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every six months..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions" (Public Law 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). Since its creation in 1976, the ITC has submitted 47 semi-annual (May and November) Reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. ITC Reports are available from the ITC's web site (<http://www.epa.gov/opptintr/itc>) within a few days of submission to the Administrator and from <http://www.epa.gov/fedrgstr> after publication in the *Federal Register*. The ITC meets monthly and produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC Staff, ITC Members, and their U.S. Government organizations and contract support provided by EPA. ITC Members and Staff are listed at the end of this Report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Reporting Rules

Following receipt of the ITC's Report (and the revised *Priority Testing List*) by the USEPA Administrator, the USEPA's Office of Pollution Prevention and Toxics (OPPT) promulgates TSCA

section 8(a) PAIR and TSCA section 8(d) Health and Safety Data (HaSD) reporting rules for chemicals added to the *Priority Testing List*. The PAIR rule requires producers and importers of CAS-numbered chemicals added to the *Priority Testing List* to submit production and exposure reports under TSCA section 8(a). The HaSD reporting rule requires producers, importers, and processors of all chemicals (including those with no CAS numbers) added to the *Priority Testing List* to submit unpublished health and safety studies under TSCA section 8(d) that must be in compliance with the revised HaSD reporting rule published in the *Federal Register* of April 1, 1998 (63 FR 15765) (FRL-5750-4). All submissions must be received by the USEPA within 90 days of the reporting rules' *Federal Register* publication date. The reporting rules are automatically promulgated by OPPT unless otherwise requested by the ITC. It is an ITC policy, for most chemicals that are added to the *Priority Testing List*, to delay automatic promulgation of HaSD reporting rules to allow voluntary submission of studies of specific interest (see Unit II.C. of this Report for further details).

B. ITC's Use of TSCA Section 8 and Other Information

The ITC reviews the TSCA section 8(a) PAIR reports, TSCA section 8(d) HaSD reporting studies and "other information" that becomes available after the ITC adds chemicals to the *Priority Testing List*. "Other information" includes TSCA section 4(a) and 4(d) studies, TSCA section 8(c) submissions, TSCA section 8(e) "substantial risk" notices, "For Your Information" (FYI) submissions, ITC

voluntary submissions, unpublished data submitted to and from U.S. Government organizations represented on the ITC, published papers, as well as use, exposure, effects, and persistence data that are voluntarily submitted to the ITC by manufacturers, importers, processors, and users of chemicals recommended by the ITC. The ITC reviews this information and determines if data needs should be revised, if chemicals should be removed from the *Priority Testing List*, or if recommendations should be changed to designations.

C. Promoting More Efficient Use of Information Submission Resources

To promote more efficient use of information submission resources, the ITC developed VISIP. VISIP provides examples of data needed by ITC Member U.S. Government organizations, examples of studies that should not be submitted, the milestones for submitting information, guidelines for using the TSCA Electronic HaSD Reporting Form, and instructions for electronically submitting full studies. The TSCA Electronic HaSD Reporting Form can be used to provide information electronically on ITC voluntary submissions, TSCA section 8(d) studies, FYI submissions, and TSCA section 8(e) studies. VISIP is described in the ITC's 41st Report published in the *Federal Register* of April 9, 1998 (63 FR 17658) (FRL-5773-5) and is accessible through the world wide web (<http://www.epa.gov/opptintr/itc/visip.htm>). To facilitate the implementation of VISIP, the ITC developed the Voluntary Information Submissions Innovative Online Network (VISION). VISION is described in the ITC's 42nd Report

published in the **Federal Register** of August 7, 1998 (63 FR 42554) (FRL-5797-8) and is accessible through the world wide web (<http://www.epa.gov/opptintr/itc/vision.htm>). VISION includes the VISP and links to the TSCA Electronic HaSD Reporting Form (<http://www.epa.gov/opptintr/er/hasd.htm>) including revised section 3.2 of the TSCA Electronic HaSD Reporting Form to provide more use and exposure information (see the ITC's 46th Report published in the **Federal Register** of December 1, 2000 (65 FR 75552) (FRL-6594-7) for details.

The ITC requests that chemical producers, importers, processors, and users provide information electronically via VISION on chemicals for which the ITC is soliciting voluntary information. To enhance visibility, the ITC will be adding all chemicals to the *Priority Testing List* for which it is soliciting voluntary information. If the ITC does not receive voluntary information submissions to meet its data needs according to the procedures in VISP, the ITC may then request that EPA promulgate the appropriate TSCA sections 8(a) and 8(d) reporting rules to determine if there are unpublished data to meet those needs. The ITC requests that those companies responding to a TSCA section 8(d) HaSD reporting rule provide data by using the TSCA Electronic HaSD Reporting Form.

D. Coordinating Information Requests

To avoid duplicate reporting, the ITC carefully coordinates its information solicitations and reporting requirements with other national and international testing programs, e.g., the National Toxicology Program, the Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) Program, and the USEPA's HPV Challenge Program. The ITC is currently focusing its efforts on persistent non-HPV chemicals that have exposure potential, but few, if any, publicly available ecological or health effects data. The ITC is working with the USEPA's workgroups, such as the Persistent Bioaccumulative Toxics (PBT), Endocrine Disruption, and perfluorotylsulfonate chemicals workgroups to develop data that will complement the objectives of those programs.

E. Requests to Promulgate TSCA Section 8(a) PAIR and Section 8(d) HaSD Reporting Rules

The ITC has not received any submissions on the chloroalkenes, chlorinated trihalomethyl pyridines, trihaloethylidene bisbenzenes,

trifluralins and trichlorophenyldihydropyrazols in response to its solicitation for use and exposure information in the ITC's 45th Report. Therefore, the ITC is asking the EPA to promulgate a TSCA section 8(a) PAIR rule for the 3 chloroalkenes added to the *Priority Testing List* in the ITC's 47th Report published in the **Federal Register** of April 3, 2001 (66 FR 17768) (FRL-6763-6) and 5 chlorinated trihalomethyl pyridines, 2 trihaloethylidene bisbenzenes, 3-chlorotrifluralin, and 4 trichlorophenyldihydropyrazols added to the *Priority Testing List* in this 48th ITC Report. The PAIR data will provide production and exposure information and aid in the selection of chemicals for potential TSCA section 8(d) HaSD reporting rules.

The ITC is asking the USEPA not to promulgate TSCA section 8(d) HaSD reporting rules for the alkylphenols and alkylphenol ethoxylates that were added to the *Priority Testing List* in the ITC's 39th Report published in the **Federal Register** of February 25, 1997 (62 FR 8578) (FRL-5580-9) and in the ITC's 41st Report because of a need to further review the data. The TSCA section 8(d) HaSD reporting rule for methylal that was added to the *Priority Testing List* in the ITC's 42nd Report is no longer needed since this chemical is being removed from the *Priority Testing List* in this Report (see Unit IV.B.2. of this Report).

At this time, the ITC is requesting that EPA not promulgate TSCA section 8(d) HaSD reporting rules for the 5 chlorinated trihalomethyl pyridines, 2 trihaloethylidene bisbenzenes, 3-chlorotrifluralin, and 4 trichlorophenyldihydropyrazols added to the *Priority Testing List* in this ITC Report, to allow producers, importers, processors, and users an opportunity to voluntarily provide the requested information (see Unit IV. of this Report).

After review of the information provided in the TSCA section 8(a) PAIR rule published in the **Federal Register** of July 24, 2000 (65 FR 45535) (FRL-6589-1), the ITC is requesting that the USEPA promulgate TSCA section 8(d) HaSD reporting rules for 3-amino-5-mercapto-1,2,4-triazole (CAS No. 16691-43-3) and glycoluril (CAS No. 496-46-8). These TSCA section 8(d) HaSD reporting rules will require the submission of pharmacokinetics, subchronic toxicity, immunotoxicity, genotoxicity, carcinogenicity, reproductive and developmental effects, and ecological effects studies. The chemical purity of 3-amino-5-mercapto-1,2,4-triazole and glycoluril in these studies should exceed 90%.

III. ITC's Activities During this Reporting Period (November 2000 to April 2001)

In its 45th and 46th ITC Reports, the ITC discussed its strategies to screen and evaluate chemicals for persistence and bioconcentration potential. These strategies are referred to as Degradation Effects Bioconcentration Information Testing Strategies (DEBITS). DEBITS provides a means to prioritize chemicals based on degradation, ecological or human health effects, and bioconcentration information. In its 45th ITC Report, the ITC added several chemicals to its web site to solicit measured bioconcentration data and use and exposure information. To avoid duplicate reporting requirements, the ITC is removing the USEPA's HPV Challenge Program chemicals (<http://www.epa.gov/opptintr/chemrtk/hpvchmlt.htm>) and European Union's HPVCs (<http://ecb.ei.jrc.it/existing-chemicals/>) from its web site. In its 46th ITC Report, the ITC initiated efforts to implement DEBITS by focusing its efforts on structural classes of chemicals from a subset of 42 moderate production volume (MPV) chemicals (production/importation volumes between 100,000 and 1,000,000 pounds) with estimated or measured bioconcentration factors (BCFs) > 250 and about 70 structurally related non-MPV chemicals (also with BCFs > 250). In its 47th ITC Report, the ITC added more of these chemicals from its DEBITS prioritization to its *Priority Testing List*. Other chemical groups such as nitro musks, polycyclic musks, and tertiary butyl peroxyl chemicals were reviewed but not added to the *Priority Testing List*.

During this reporting period, the ITC continued to focus its efforts on structural classes of MPV chemicals by adding 5 chlorinated trihalomethyl pyridines, 2 trihaloethylidene bisbenzenes, 4 trichlorophenyldihydropyrazols, and 3-chlorotrifluralin to its *Priority Testing List* and soliciting voluntary health and ecological effects information for these chemicals under the ITC's VISP. The ITC evaluated several chlorinated pyridines, and azo bis (alpha nitriles) and decided not to add them to the *Priority Testing List* at this time.

IV. Revisions to the TSCA Section 4(e) Priority Testing List

A. Chemicals Added to the Priority Testing List

1. *Chlorinated trihalomethyl pyridines*—i. *Recommendation*. Five non-HPV chlorinated trihalomethyl pyridines are being added to the *Priority Testing List* to obtain information on

uses, exposures, environmental releases, pharmacokinetics, subchronic toxicity, mutagenicity, reproductive and developmental effects, carcinogenicity, and ecological effects as well as the percent by weight of any of the 5 unreacted chlorinated trihalomethyl

pyridines in formulated products. The 5 non-HPV chlorinated trihalomethyl pyridines are 3,5-dichloro-2-(trichloromethyl)pyridine (CAS No. 1128-16-1), 2,3,4,5-tetrachloro-6-(trichloromethyl)pyridine (CAS No. 1134-04-9), 3,4,5-trichloro-2-

(trichloromethyl)pyridine (CAS No. 1201-30-5), 2,6-dichloro-3-(trichloromethyl)pyridine (CAS No. 55366-30-8), and 2,3-dichloro-5-(trichloromethyl)pyridine (CAS No. 69045-84-7). See Table 2 below.

TABLE 2.—CHLORINATED TRIHALOMETHYL PYRIDINES IDENTIFIED BY DEBITS

CAS No.	Chlorinated trihalomethyl pyridine	HPV	BCF	Fish LC ₅₀
001128-16-1	3,5-Dichloro-2-(trichloromethyl)pyridine	No	238	3.5
001134-04-9	2,3,4,5-Tetrachloro-6-(trichloromethyl)pyridine	No	2343	0.1
001201-30-5	3,4,5-Trichloro-2-(trichloromethyl)pyridine	No	747	2.7
001817-13-6	3,6-Dichloro-2-(trichloromethyl)pyridine	Yes	238	3.5
001929-82-4	2-Chloro-6-(trichloromethyl)pyridine	Yes	84	9.3
055366-30-8	2,6-Dichloro-3-(trichloromethyl)pyridine	No	238	3.1
069045-78-9	2-Chloro-5-(trichloromethyl)pyridine	Yes	76	7.6
069045-83-6	2,3-Dichloro-5-(trichloromethyl)pyridine	Yes	238	3.2
069045-84-7	2,3-Dichloro-5-(trifluoromethyl)pyridine	No	45	12.2

ii. *Rationale for recommendation.* The 5 non-HPV chlorinated trihalomethyl pyridines are predicted to persist in the environment. They present suspicions of toxicity based on fish LC₅₀ values and mutagenicity based on data from structurally related compounds. Several of these non-HPV chlorinated trihalomethyl pyridines are produced/imported in substantial amounts (>100,000 pounds) and have potential to bioconcentrate.

iii. *Supporting information.* The ITC used DEBITS to identify 9 chlorinated trihalomethyl pyridines (Table 2 of this unit). Four of these chlorinated trihalomethyl pyridines are in the USEPA's HPV Challenge Program, including the registered pesticide, nitrapyrin (CAS No. 1929-82-4). The ITC is not soliciting information on the HPV chemicals but did review the available toxicity and ecological effects information on these compounds to better evaluate the data needs for the non-HPV chlorinated trihalomethyl pyridines.

The trichloro- and tetrachloro trichloromethyl pyridines have estimated bioconcentration factors (BCFs) > 250 while 2 of 3 dichloro trichloromethyl pyridines have estimated BCFs very close to this threshold (i.e., BCFs of 238). All five chloro trihalomethyl pyridines have fish LC₅₀ values about 10 milligram/Liter (mg/L) or less, indicating that they have potential to cause acute effects in fish. The fish LC₅₀ values are based on measured or estimated values for fathead minnows. The predicted mode of toxic action (based on fathead minnow models described by Russom et al., 1997) for 4 of 5 chlorinated trihalomethyl pyridines is narcosis. The tetrachloro trichloromethyl pyridine

(CAS No. 1134-04-9) with the lowest fish LC₅₀ value and highest BCF is predicted to have a mode of toxic action based on uncoupling of oxidative phosphorylation.

There were no health effects data available for the 5 chlorinated trihalomethyl pyridines being added to the *Priority Testing List*. However, there were some available health effects data for the two HPV monochloro substituted trichloromethyl pyridines (CAS Nos. 1929-82-4 and 69045-78-9) and a HPV dichloro trichloromethyl pyridine (CAS No. 69045-83-6).

Subchronic and mutagenicity data were available for 2-chloro-5-(trichloromethyl)pyridine (CAS No. 69045-78-9). Mice exposed to 10 parts per million (ppm) of 2-chloro-5-(trichloromethyl)pyridine died after 4 days. Histologic examination of these animals revealed hepatic necrosis and vacuolization. No treatment related effects were observed at 0, 0.1, or 1.0 ppm exposure levels (Dow Chemical Co., 1991). In a dermal irritation study with rats, a dose of 500 mg/(kilogram) kg/day [for 21 days (18 hours per day)] 2-chloro-5-(trichloromethyl)pyridine produced a well-defined systemic toxic response characterized by hepatic necrosis and a disturbance of lipid metabolism. As a result of topical irritation among the rats in the 100 mg/kg/day group, the no-observed-adverse-effect-level (NOAEL) was 20 mg/kg/day (Hazelton Laboratories, 1992). In a number of mutagenicity test systems, 2-chloro-5-(trichloromethyl)pyridine was found to be mutagenic (Confidential, 1984a; Confidential 1984b; and Confidential 1984c).

Subchronic data were available for 2,3-dichloro-5-(trichloromethyl)pyridine (CAS No. 69045-83-6). Degenerative

lesions occurred in the nasal turbinates of rats and mice exposed to 0.5 ppm 2,3-dichloro-5-(trichloromethyl)pyridine for 2 weeks (Confidential, 1986).

Numerous health effects data were available for 2-chloro-6-(trichloromethyl)pyridine or nitrapyrin (CAS No. 1929-82-4). Nitrapyrin was well absorbed by dogs when administered using the oral route (Redemann et al., 1966). Oral administration of nitrapyrin at doses of 30 to 50 mg/kg/day and greater in pregnant rats and rabbits caused maternal and fetal toxicity (Berdasco et al., 1988). Nitrapyrin is also reported to be mutagenic in the reverse mutation assay in *Salmonella typhimurium* under most conditions (Zeiger et al., 1988). Hepatotoxicity occurred in rats dermally exposed to 500 mg/kg/day of 2-chloro-5-(trichloromethyl)pyridine for 3 weeks (Hazelton Laboratory, 1992).

iv. *Information needs.* For the 5 non-HPV chlorinated trihalomethyl pyridines in Table 2 of this unit, the ITC needs:

a. Use information, including percentages of production or importation that are associated with different uses;

b. Identification of the chlorinated trihalomethyl pyridines that are intermediates and the final products in which they are contained;

c. Weight percent of chlorinated trihalomethyl pyridines in commercial formulated products; and

d. Pharmacokinetics, subchronic toxicity, mutagenicity, reproductive and developmental effects, carcinogenicity, and ecological effects data.

2. *Trihaloethylidene bisbenzenes*—i. *Recommendation.* Two non-HPV trihaloethylidene bisbenzenes are being added to the *Priority Testing List* to obtain information on uses, exposures,

environmental releases, pharmacokinetics, subchronic toxicity, mutagenicity, reproductive and developmental effects, carcinogenicity,

and ecological effects. The 2 non-HPV trihaloethylidene bisbenzenes are hexafluoroisopropylidenebis (4-hydroxybenzene) and benzene, 1,1'-

(2,2,2-trichloroethylidene)bis-. See Table 3 below.

TABLE 3.—TRIALOETHYLIDENE BISBENZENES IDENTIFIED BY DEBITS

CAS No.	Trihaloethylidene bisbenzene	BCF
000072-43-5	Methoxychlor (2,2-bis(<i>p</i> -methoxyphenyl)-1,1,1-trichloroethane)	8128
001478-61-1	Hexafluoroisopropylidenebis (4-hydroxybenzene)	556
002971-22-4	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis-	1122

ii. *Rationale for recommendation.* The 2 non-HPV trihaloethylidene bisbenzenes have been produced/imported in substantial amounts (>100,000 pounds) and are predicted to persist and bioconcentrate in the environment. Benzene, 1,1'-(2,2,2-trichloroethylidene)bis- (CAS No. 2971-22-4) is structurally related to the insecticide methoxychlor, which has estrogenic activity and has been shown to alter hormone levels, decrease fertility, damage reproductive organs, and retard reproductive development in experimental animals.

iii. *Supporting information.* The ITC used DEBITS to identify 3 trihaloethylidene bisbenzenes (Table 3 of this unit). All are MPV chemicals that have estimated BCFs well over 250 (Table 3 of this unit). One of the trihaloethylidene bisbenzenes is the well studied insecticide, methoxychlor (CAS No. 72-43-5), that is not being added to the *Priority Testing List* but which is currently regulated by a number of international, Federal, and State agencies because of its potential to cause adverse effects in humans. Methoxychlor is included in the USEPA's Toxics Release Inventory (TRI) PBT rule published in the *Federal Register* of November 4, 1999 (64 FR 60194) (FRL-6097-7) and is a candidate for regulatory action under the USEPA's PBT Initiative. The Agency for Toxic Substances and Disease Registry (ATSDR) has recently completed a Toxicological Profile for methoxychlor which summarizes available health effects data (ATSDR, 2000). Among the effects that are relevant to predicting the effects of hexafluoroisopropylidenebis (4-hydroxybenzene) and benzene, 1,1'-(2,2,2-trichloroethylidene)bis- are those related to alteration of hormone levels, including increasing levels of prolactin, follicle stimulating hormone (FSH), and thyroid stimulating hormone (TSH) in the pituitary of male rats (Goldman et al. 1986; Gray et al. 1989). In addition to the ATSDR Toxicological Profile that summarizes the health effects of methoxychlor, a Pesticide Information

Profile that summarizes the ecological effects of methoxychlor is available on the web (<http://ace.orst.edu/cgi-bin/mfs/01/pips/methoxyc.htm>). Methoxychlor is slightly toxic to bird species, with reported acute oral LD₅₀ values of greater than 2,000 mg/kg in the mallard duck, sharp-tailed grouse, and California quail (Hudson et al., 1984). In contrast, methoxychlor is highly toxic to fish; 96-hour LD₅₀ values for the technical grade 90% pure chemical are less than 20 ug/L for cutthroat trout, atlantic salmon, brook trout, lake trout, northern pike, and large mouth bass (Johnson and Finley, 1980).

There are some health effects data for hexafluoroisopropylidenebis(4-hydroxybenzene) and benzene, 1,1'-(2,2,2-trichloroethylidene)bis-. In an *in vitro* study evaluating endocrine disruption, hexafluoroisopropylidenebis(4-hydroxybenzene) was found to be estrogenic in MCF-7 cells, promoting cell proliferation and increasing protein synthesis (Olea-Serrano, 1998; Perez et al., 1998). Benzene, 1,1'-(2,2,2-trichloroethylidene)bis- had estrogenic activity at doses as low as 1 mg/rat (Bitman and Cecil, 1970). No other health or ecological effect studies were available for these two trihaloethylidene bisbenzenes.

iv. *Information needs.* The ITC needs information on uses, exposures, environmental releases, pharmacokinetics, subchronic toxicity, mutagenicity, reproductive and developmental effects, carcinogenicity, and ecological effects.

3. 3-Chlorotrifluralin—i.

Recommendation. 3-Chlorotrifluralin (CAS No. 29091-20-1) is being added to the *Priority Testing List* to obtain information on uses, exposures, environmental releases, pharmacokinetics, subchronic toxicity, mutagenicity, reproductive and developmental effects, carcinogenicity, and ecological effects.

ii. *Rationale for Recommendation.* 3-Chlorotrifluralin is a non-HPV chemical that has been produced/imported in

substantial amounts (>100,000 pounds) and is predicted to persist and bioconcentrate in the environment. It is a chlorinated analog of the herbicide, trifluralin (CAS No. 1582-09-8). Trifluralin causes adverse effects in experimental animals and is considered to be a possible human carcinogen by the USEPA. 3-Chlorotrifluralin has limited toxicity data even though its potential to persist and bioconcentrate in the environment may be greater than trifluralin.

iii. *Supporting Information.* 3-Chlorotrifluralin meets the DEBITS criteria and has an estimated BCF of 7,700. There are no available subchronic toxicity studies or ecological effects data on this compound. The LD₅₀ in mice was determined to be 2,744 mg/kg (Industrial Bio-Test Laboratories, 1992). The structurally related trifluralin caused adverse liver and kidney effects in rodents and dogs as a result of subchronic and chronic feeding studies. Trifluralin induced urinary tract tumors (renal pelvis carcinomas and urinary bladder papillomas) and thyroid tumors (adenomas/carcinomas combined) in one animal species (Fisher 344 rats) in one study (USEPA, 2000). Trifluralin is included in the USEPA's TRI PBT rule and is a candidate for regulatory action under the USEPA's PBT Program.

iv. *Information Needs.* The ITC needs information on uses, exposures, environmental releases, pharmacokinetics, subchronic toxicity, mutagenicity, reproductive and developmental effects, carcinogenicity, and ecological effects.

4. Trichlorophenyldihydropyrazols—

i. *Recommendation.* Four trichlorophenyldihydropyrazols are being added to the *Priority Testing List* to obtain information on uses, exposures, environmental releases, pharmacokinetics, subchronic toxicity, mutagenicity, reproductive and developmental effects, carcinogenicity, and ecological effects (Table 4 of this unit).

TABLE 4.—TRICHLOROPHENYLDIHYDROPYRAZOLS IDENTIFIED BY DEBITS

CAS No.	Trichlorophenyldihydropyrazol	BCF
030707-68-7	3H-Pyrazol-3-one, 5-[(2-chloro-5-nitrophenyl)amino]-2,4-dihydro-2-(2,4,6-trichlorophenyl)-	2230
040567-18-8	Benzamide, 3-amino-N-[4,5-dihydro-5-oxo-1-(2,4,6-trichlorophenyl)-1H-pyrazol-3-yl]-	92
053411-33-9	3H-Pyrazol-3-one, 5-[(5-amino-2-chlorophenyl)amino]-2,4-dihydro-2-(2,4,6-trichlorophenyl)-	44
063134-25-8	Benzamide, N-[4,5-dihydro-5-oxo-1-(2,4,6-trichlorophenyl)-1H-pyrazol-3-yl]-3-nitro-	338

ii. *Rationale for recommendation.* The 4 trichlorophenyldihydropyrazols are predicted to persist in the environment. Two of these trichlorophenyldihydropyrazols (CAS Nos. 30707-68-7 and 63134-25-8) are produced/imported in substantial amounts (>100,000 pounds) and have potential to bioconcentrate.

iii. *Supporting information.* Two of the four trichlorophenyldihydropyrazols have estimated BCFs >250 (Table 4 of this unit). The other two chemicals are structurally related but are predicted to have lower bioconcentration potential. There are no available health or ecological effects studies for any of the trichlorophenyldihydropyrazols.

iv. *Information needs.* The ITC needs information on uses, exposures,

environmental releases, pharmacokinetics, subchronic toxicity, mutagenicity, reproductive and developmental effects, carcinogenicity, and ecological effects.

B. Chemicals Removed From the Priority Testing List

1. *Alkylphenols and alkylphenol ethoxylates.* In this Report, the ITC is removing 22 alkylphenols and alkylphenol ethoxylates that were added to the *Priority Testing List* in the ITC's 41st Report published in the *Federal Register* of April 9, 1998 (63 FR 17658) (FRL-5773-5). The 22 alkylphenols and alkylphenol ethoxylates are being removed from the *Priority Testing List* because:

i. No domestic production or importation volumes were reported to the USEPA in response to 1986, 1990, 1994, and 1998 IURs (indicating that volumes were less than 10,000 pounds per site in 1985, 1989, 1993, and 1997) and

ii. No domestic production or importation volumes were reported to the USEPA in response to the PAIR rule published in the *Federal Register* of July 5, 2000 (65 FR 41371) (FRL-6589-1) (indicating that volumes were less than 1,000 pounds per site in 1999).

The 22 alkylphenols and alkylphenol ethoxylates being removed from the *Priority Testing List* are listed in Table 5 of this unit.

TABLE 5.—ALKYLPHENOLS AND ALKYLPHENOL ETHOXYLATES BEING REMOVED FROM THE PRIORITY TESTING LIST

CAS No.	Chemical
000136-81-2	Phenol, 2-pentyl-
002446-69-7	Phenol, 4-hexyl-
002589-78-8	Phenol, 4-hexadecyl-
003279-27-4	Phenol, 2-(1,1-dimethylpropyl)-
009004-87-9	Poly(oxy-1,2-ethanediyl), α -(iso octylphenyl)- ω -hydroxy-
009063-89-2	Poly(oxy-1,2-ethanediyl), α -(octylphenyl)- ω -hydroxy-
025401-86-9	Phenol, 2-hexadecyl-
025735-67-5	Phenol, 4-sec-pentyl-
026401-47-8	Poly(oxy-1,2-ethanediyl), α -(4-dodecylphenyl)- ω -hydroxy-
026401-74-1	Phenol, 2-sec-pentyl-
027157-66-0	Phenol, decyl-
059911-95-4	Poly(oxy-1,2-ethanediyl), α -(4-hexadecylphenyl)- ω -hydroxy-
061723-87-3	Poly(oxy-1,2-ethanediyl), α -(tridecylphenyl)- ω -hydroxy-
068081-86-7	Phenol, nonyl derivs.
068784-24-7	Phenol, C18-30-alkyl derivs.
068891-67-8	Phenol, polypropene derivs.
068954-70-1	Phenol, polyethylene derivs.
070682-80-3	Phenol, tetradecyl-
071902-25-5	Phenol, octenylated
084605-25-4	Phenol, 1-methylhexyl derivs.
091672-41-2	Phenol, 2-nonyl-, branched
112375-89-0	Phenol, poly(2,4,4-trimethylpentene) derivs.

2. *Methylal.* Methylal (CAS No. 109-87-5) was added to the *Priority Testing List* in the ITC's 42nd Report and recommended for information reporting to meet U.S. Government data needs. In response to that recommendation, the USEPA added methylal to the PAIR rule published in the *Federal Register* of July 24, 2000 (65 FR 45535) (FRL-6589-1). The ITC reviewed the data submitted in response to the PAIR rule. These data indicated that in 1999, 10,000 to

500,000 pounds of methylal were produced under controlled release and enclosed conditions, involving <10 and 10-100 workers, respectively. Methylal's manufacture was associated with industrial products. The ITC is removing methylal from the *Priority Testing List* because it is being sponsored for testing under the USEPA's HPV Challenge Program. Test plans and data developed under the challenge program may be reviewed to

determine if they meet the needs of the U.S. Government.

3. *Ethyl silicate.* Ethyl silicate (CAS No. 78-10-4) was also added to the *Priority Testing List* in the ITC's 42nd Report and recommended for information reporting to meet U.S. Government data needs. In response to that recommendation, the USEPA added ethyl silicate to the PAIR rule published in the *Federal Register* of July 24, 2000 (65 FR 45535) (FRL-6589-1) and the

ITC received voluntary use and toxicity data from the Silicones Environmental Health and Safety Council (SEHSC). Data submitted in response to the PAIR rule indicated that in 1999, 10,000 to 500,000 pounds of ethyl silicate were produced under enclosed conditions, that 10–100 workers were involved in the production of ethyl silicate under those conditions and that ethyl silicate's manufacture and customer uses were associated with industrial products. SEHSC's voluntary submissions confirmed that ethyl silicate is used as an industrial, not consumer chemical. Toxicity data voluntarily submitted by SEHSC indicated that:

- i. Ethyl silicate's rat oral LD₅₀ was 5,920 mg/kg (Smyth et al., 1949);
- ii. No deaths occurred when rats, mice, guinea pigs, and rabbits were exposed to 50 and 88 ppm ethyl silicate for 90 days and the only significant observation was a depression in kidney weights in the mice exposed to 88 ppm ethyl silicate (Pozzani and Carpenter, 1951);
- iii. The mutagenic potential of ethyl silicate was evaluated using the Chinese Hamster Ovary (CHO), Sister Chromatid Exchange (SCE), and Unscheduled DNA Synthesis (UDS) assays; the only significant mutagenic effect was seen in the UDS assay (Slesinski et al., 1981). The ITC is removing ethyl silicate from the *Priority Testing List* because it is being sponsored for testing under the USEPA's HPV Challenge Program. Test plans and data developed under the challenge program may be reviewed to determine if they meet the needs of the U.S. Government.

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VI. TSCA Interagency Testing Committee

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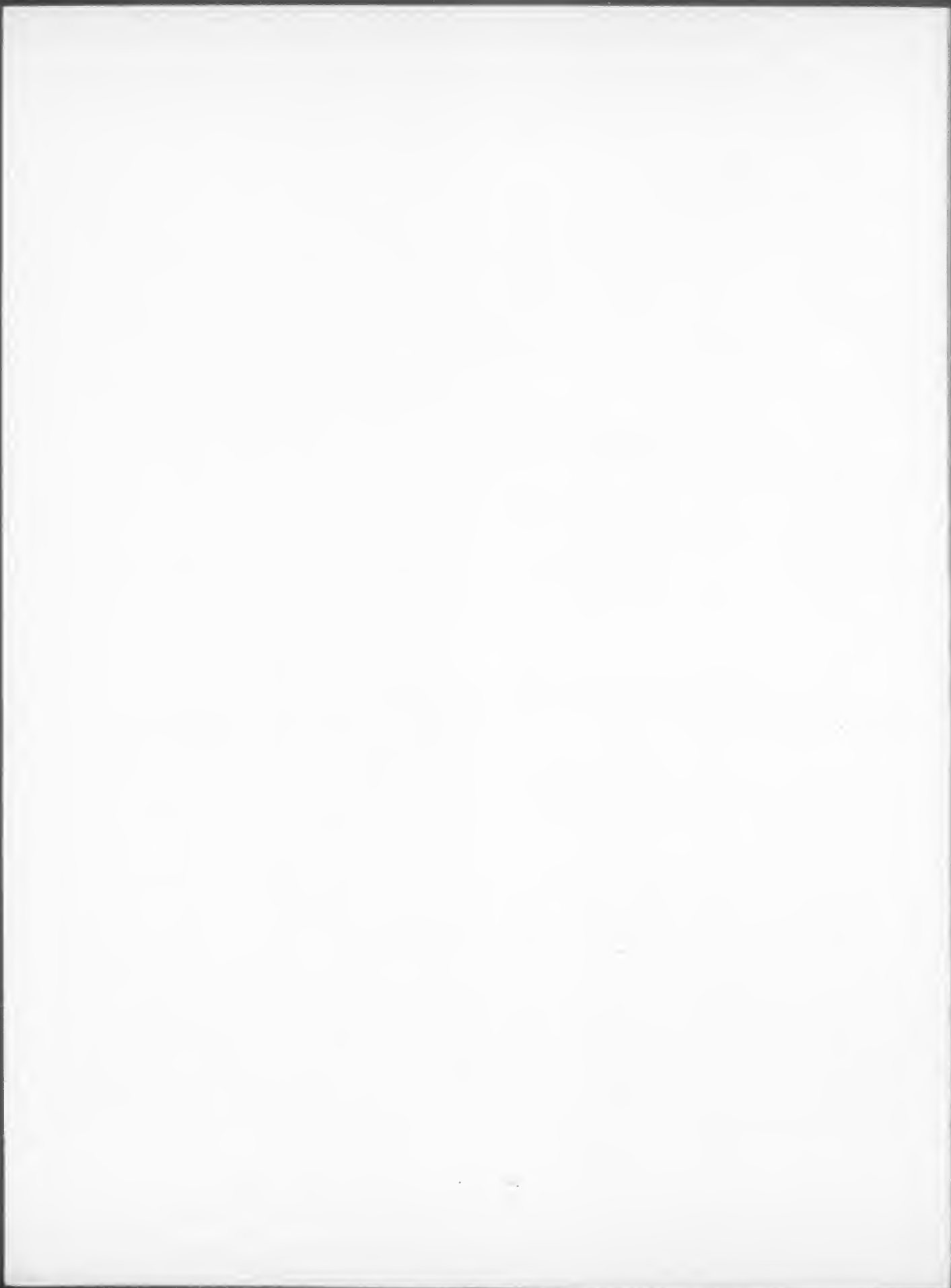
Federal Register

Friday,
October 5, 2001

Part V

The President

Executive Order 13227—President's
Commission on Excellence in Special
Education



Presidential Documents

Title 3—

Executive Order 13227 of October 2, 2001

The President

President's Commission on Excellence in Special Education

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. The education of all children, regardless of background or disability, while chiefly a State and local responsibility, must always be a national priority. One of the most important goals of my Administration is to support States and local communities in creating and maintaining a system of public education where no child is left behind. Unfortunately, among those at greatest risk of being left behind are children with disabilities. The Individuals with Disabilities Education Act (IDEA) is a landmark statute that asserts the rights of all children with disabilities to a free, appropriate public education. My Administration strongly supports the principles embodied in the IDEA and the goal of providing special education and related services to children with disabilities so that they can meet high academic standards and participate fully in American society. It is imperative that special education operate as an integral part of a system that expects high achievement of all children, rather than as a means of avoiding accountability for children who are more challenging to educate or who have fallen behind.

Sec. 2. Establishment. There is established a President's Commission on Excellence in Special Education (the "Commission"). The Commission shall be composed of not more than 19 members to be appointed by the President from the public and private sectors, as well as up to 5 ex officio members from the Departments of Education and Health and Human Services. The members may include current and former Federal, State, and local government officials, recognized special education experts, special and general education finance experts, education researchers, educational practitioners, parents of children or young adults with disabilities, persons with disabilities, and others with special experience and expertise in the education of children with disabilities. The President shall designate a Chairperson from among the members of the Commission. The Secretary of Education shall select an Executive Director for the Commission.

Sec. 3. Duties and Commission Report. (a) The Commission shall collect information and study issues related to Federal, State, and local special education programs with the goal of recommending policies for improving the educational performance of students with disabilities. In furtherance of its duties, the Commission shall invite experts and members of the public to provide information and guidance.

(b) Not later than April 30, 2002, the Commission shall prepare and submit a report to the President outlining its findings and recommendations. The report shall include, but need not be limited to:

(1) An examination of available research and information on the effectiveness and cost of special education and the appropriate role of the Federal Government in special education programming and funding. The examination shall include an analysis of the factors that have contributed to the growth in costs of special education since the enactment of the Education for All Handicapped Children Act (a predecessor of IDEA);

(2) Recommendations regarding how Federal resources can best be used to improve educational results for students with disabilities;

(3) A recommended special education research agenda;

(4) An analysis of the impact of providing appropriate early intervention in reading instruction on the referral and identification of children for special education;

(5) An analysis of the effect of special education funding on decisions to serve, place, or refer children for special education services and recommendations for alternative funding formulae that might distribute funds to achieve better results and eliminate any current incentives that undermine the goals of ensuring that children with disabilities receive a high-quality education;

(6) An analysis of, and recommendations regarding, how the Federal Government can help States and local education agencies provide a high-quality education to students with disabilities, including the recruitment and retention of qualified personnel and the inclusion of children with disabilities in performance and accountability systems;

(7) An analysis of the impact of Federal and State statutory, regulatory, and administrative requirements on the cost and effectiveness of special education services, and how these requirements support or hinder the educational achievement of students with disabilities;

(8) An assessment of how differences in local educational agency size, location, demographics, and wealth, and in State law and practice affect which children are referred to special education, and the cost of special education; and

(9) A review of the experiences of State and local governments in financing special education, and an analysis of whether changes to the Federal "supplement not supplant" and "maintenance of effort" requirements are appropriate.

Sec. 4. Administration, Compensation, and Termination.

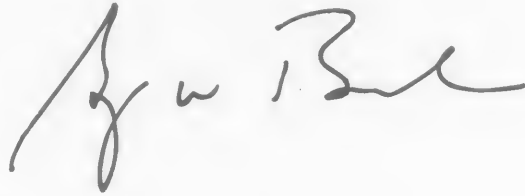
(a) The Department of Education shall, to the extent permitted by law, provide administrative support and funding for the Commission. In addition, appropriate Federal agencies may designate staff to assist with the work of the Commission. To the extent permitted by law, Federal Government employees may be detailed to the Commission without reimbursement to the Federal agency.

(b) Members of the Commission shall serve without compensation but, while engaged in the work of the Commission, members appointed from among private citizens of the United States shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707), to the extent funds are available for such purposes.

(c) The functions of the President under the Federal Advisory Committee Act that are applicable to the Commission, except that of reporting to the Congress, shall be performed by the Department of Education in accordance with the guidelines that have been issued by the Administrator of General Services.

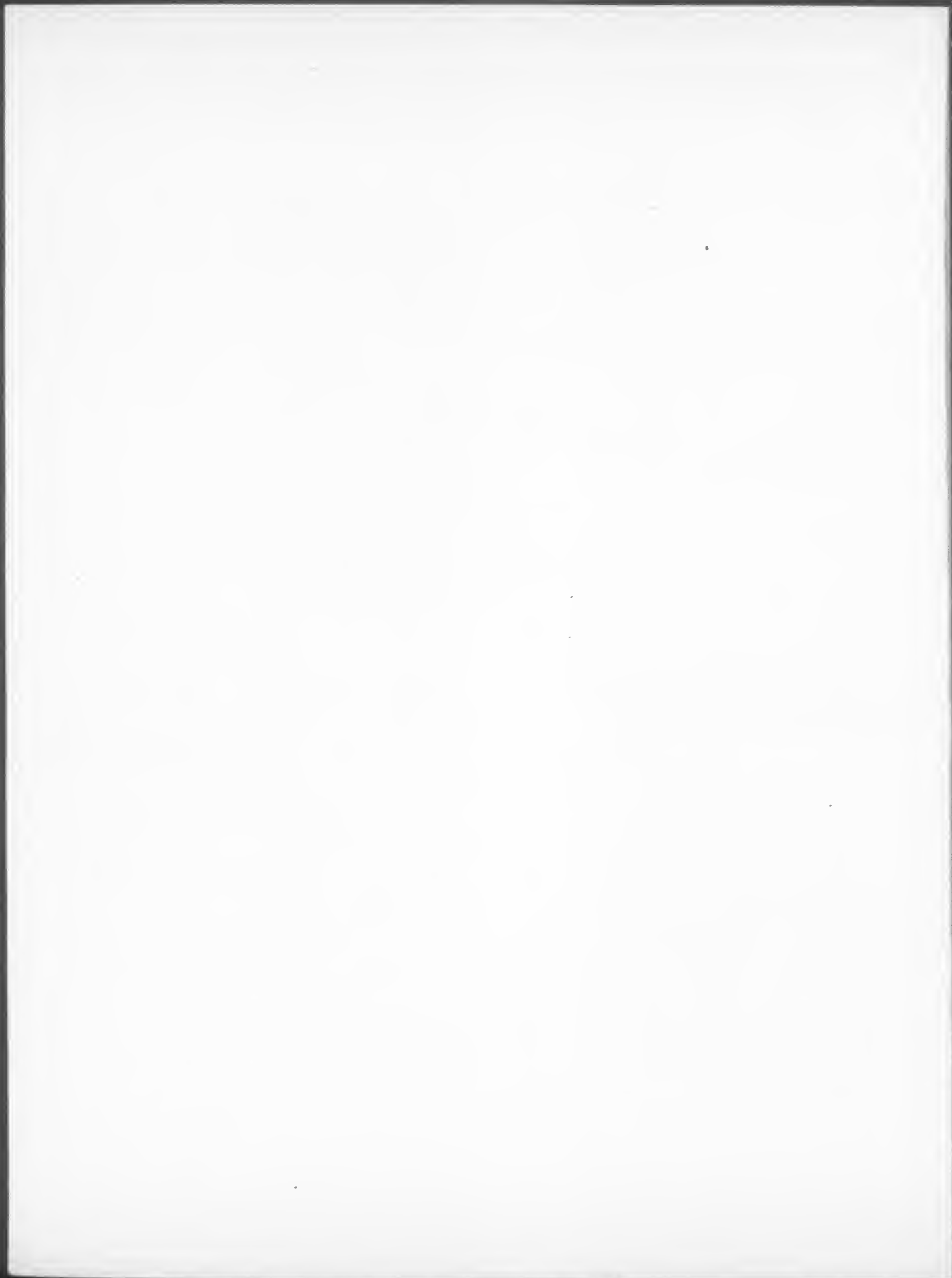
(d) The Chairperson may from time to time prescribe such rules, procedures, and policies relating to the activities of the Commission as are not inconsistent with law or with the provisions of this order.

(e) The Commission shall terminate 30 days after submitting its final report, unless extended by the President.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

THE WHITE HOUSE,
October 2, 2001.

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Federal Register

Vol. 66, No. 194

Friday, October 5, 2001

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

49823-50094	1
50095-50286	2
50287-50524	3
50525-50808	4
50809-51290	5

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7471	50097
7472	50099
7473	50287
7474	50289
7475	50525
7476	50527

Executive Orders:

11145 (Amended by EO 13225)	50291
11183 (Amended by EO 13225)	50291
11287 (Amended by EO 13225)	50291
12131 (Amended by EO 13225)	50291
12382 (Amended by EO 13225)	50291
12196 (Amended by EO 13225)	50291
12216 (Amended by EO 13225)	50291
12345 (Amended by EO 13225)	50291
12367 (Amended by EO 13225)	50291
12882 (Revoked by EO 13226)	50523
12900 (Amended by EO 13225)	50291
12905 (Amended by EO 13225)	50291
12907 (Revoked by EO 13226)	50523
12994 (Amended by EO 13225)	50291
13021 (Amended by EO 13225)	50291
13075 (Revoked by EO 13225)	50291
13080 (Revoked by EO 13225)	50291
13090 (Revoked by EO 13225)	50291
13134 (Amended by EO 13225)	50291
13138 (Amended by EO 13225)	50523
13138 (Amended by EO 13226)	50291
13168 (Revoked by EO 13225)	50291
13225	50291
13226	50523
13227	51287

Administrative Orders:

Presidential Determinations:	
No. 2001-27 of September 18, 2001	50807

No. 2001-28 of

September 22,

2001 50095

5 CFR

1604 50712

10 CFR

Proposed Rules:

15	50860
431	50355

11 CFR

Proposed Rules:

100	50359
114	50359
117	50359

12 CFR

950	50293
951	50296
952	50293

Proposed Rules:

Ch. IX 50366

14 CFR

23	50809, 50819
35	50302
39	49823, 49825, 50304, 50306, 50307, 50529
71	50101
73	50310
91	50531
97	50821, 50823

Proposed Rules:

39	50125, 50578, 50580, 50582, 50584, 50586, 50588, 50870, 50872, 50873, 50875, 50877, 50880, 50872, 50884, 50886, 50888, 50891, 50894, 50897, 50899, 50901, 50903, 50906, 50910, 50912, 50915, 50917
----	--

15 CFR

14	49827
742	50090
744	50090

Proposed Rules:

990 50919

17 CFR

230	50102
232	49829
239	50102
240	50103
270	50102
274	50102

Proposed Rules:

1	50786
41	50720, 50786
190	50786

230.....50744
 232.....50744
 239.....50744
 240.....49877, 50744, 50786
 242.....50720
 249.....50744
 269.....50744

18 CFR

Proposed Rules:
 Ch. 1.....50591
 37.....50919
 161.....50919
 250.....50919
 284.....50919
 358.....50919

19 CFR

10.....50534
 122.....50103
 163.....50534

20 CFR

655.....51095

21 CFR

101.....50824
Proposed Rules:
 589.....50929

22 CFR

41.....49830

24 CFR

888.....50024
 985.....50004

25 CFR

Proposed Rules:
 580.....50127

26 CFR

301.....50541
 602.....50541

27 CFR

9.....50564

28 CFR

Proposed Rules:
 100.....50931

29 CFR

102.....50310
Proposed Rules:
 470.....50010

30 CFR

210.....50827
 218.....50827
 920.....50827

Proposed Rules:
 904.....50952

31 CFR

586.....50506
 587.....50506

33 CFR

110.....50315
 160.....50565
 165.....50105, 50106, 50108,
 50315

Proposed Rules:
 155.....49877
 156.....49877

38 CFR

Proposed Rules:
 3.....49886
 4.....49886
 17.....50594
 20.....50318

40 CFR

52.....50319, 50829
 60.....49830, 50110
 61.....50110
 62.....49834
 63.....50110, 50116, 50504
 70.....49837, 49839, 50321,
 50325, 50574
 180.....50329, 50829
 261.....50332
 271.....49841, 50833
 403.....50334

Proposed Rules:
 51.....50135
 52.....50252, 50375
 60.....49894
 62.....49895
 63.....50135, 50768
 70.....49895, 50136, 50375,
 50378, 50379
 89.....51098
 90.....51098
 91.....51098
 93.....50954
 94.....51098
 141.....50961
 142.....50961
 261.....50379
 271.....49896
 281.....50963

300.....50380
 1048.....51098
 1051.....51098
 1065.....51098
 1068.....51098

41 CFR

101-46.....51095
 102-39.....51095

42 CFR

Proposed Rules:
 81.....50967
 82.....50978

45 CFR

Ch. V.....49844

46 CFR

32.....49877

47 CFR

0.....50833
 1.....50834
 2.....50834
 22.....50841
 24.....50841
 64.....50841
 73.....50576, 50843

Proposed Rules:
 64.....50139, 50140
 73.....50602, 50991

48 CFR

202.....49860
 204.....49860
 211.....49860
 212.....49860, 49862
 215.....49862
 219.....49860, 49863
 223.....49864
 225.....49862
 226.....50504
 232.....49864
 236.....49860
 237.....49860
 242.....49860
 243.....49865
 245.....49860
 248.....49865
 252.....49860, 49862, 49864,
 49865, 50504
 253.....49862
 442.....49866

49 CFR

325.....49867

355.....49867
 356.....49867
 360.....49867
 365.....49867
 366.....49867
 367.....49867
 370.....49867
 371.....49867
 372.....49867
 373.....49867
 374.....49867
 375.....49867
 376.....49867
 377.....49867
 378.....49867
 379.....49867
 381.....49867
 383.....49867
 384.....49867
 385.....49867
 386.....49867
 387.....49867
 388.....49867
 389.....49867
 390.....49867
 391.....49867
 392.....49867
 393.....49867
 395.....49867
 396.....49867
 397.....49867
 398.....49867
 399.....49867

Proposed Rules:
 171.....50147
 173.....50147
 174.....50147
 175.....50147
 176.....50147
 177.....50147
 178.....50147

50 CFR

17.....50340
 18.....50843
 223.....50350
 600.....50851
 660.....49875, 50851
 679.....50576, 50858

Proposed Rules:
 17.....50383
 222.....50148
 223.....50148
 229.....49896, 50160, 50390
 648.....51000
 679.....49908, 51001

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 5, 2001**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

- Michigan; published 8-6-01
- Missouri; published 8-6-01
- Pennsylvania; published 8-6-01

Air quality planning purposes; designation of areas:

- California; published 8-6-01

Superfund program:

- National oil and hazardous substances contingency plan—
- National priorities list update; published 8-6-01

HEALTH AND HUMAN SERVICES DEPARTMENT

Energy Employees Occupational Illness Compensation Program Act; implementation:

- Radiation dose reconstruction methods; published 10-5-01

INTERIOR DEPARTMENT

Permanent program and abandoned mine land reclamation plan submissions:

- Maryland; published 10-5-01

TRANSPORTATION DEPARTMENT

Airworthiness directives:

- Rolls-Royce Corp.; published 8-31-01

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT**

Cranberries grown in—

- Massachusetts et al.; comments due by 10-9-01; published 9-21-01

Dairy products:

- Dairy plants approved for USDA inspection and grading service; general specifications; comments due by 10-12-01; published 8-13-01

AGRICULTURE DEPARTMENT

Fresh prunes grown in—

- Washington and Oregon; comments due by 10-12-01; published 8-13-01

AGRICULTURE DEPARTMENT

Oranges, grapefruit, tangerines, and tangelos grown in Florida; comments due by 10-9-01; published 9-26-01; comments due by 10-9-01; published 9-26-01

AGRICULTURE DEPARTMENT

Food labeling:

- United States cattle and United States fresh beef products; definitions; labeling requirements; comments due by 10-9-01; published 8-7-01

Meat and poultry inspection:

- Slovakia; addition to list of countries eligible to export meat and meat products to U.S.; comments due by 10-12-01; published 8-13-01

COMMERCE DEPARTMENT

Endangered and threatened species:

- Critical habitat designations—
- Southern resident killer whales; comments due by 10-12-01; published 8-13-01

Fishery conservation and management:

- West Coast States and Western Pacific fisheries—
- West Coast salmon; comments due by 10-12-01; published 9-27-01

DEFENSE DEPARTMENT

Privacy Act; implementation; comments due by 10-9-01; published 8-9-01; comments due by 10-9-01; published 8-9-01

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

- Trademarks for government products; comments due by 10-9-01; published 8-9-01

Privacy Act; implementation

- National Imagery and Mapping Agency; comments due by 10-9-01; published 8-9-01

ENERGY DEPARTMENT

Physicians panel determinations on worker requests for assistance in

filing for State workers' compensation benefits; guidelines; comments due by 10-9-01; published 9-7-01; comments due by 10-9-01; published 9-7-01

ENERGY DEPARTMENT

Consumer products and commercial and industrial equipment; energy conservation program; meeting; comments due by 10-11-01; published 8-28-01; comments due by 10-11-01; published 8-28-01

Consumer products; energy conservation program:

- Energy conservation standards—
- Central air conditioners and heat pumps; comments due by 10-9-01; published 7-25-01
- Commercial unitary air conditioners and heat pumps; comments due by 10-12-01; published 8-17-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

- Flexible polyurethane foam fabrication operations; comments due by 10-9-01; published 8-8-01
- Integrated iron and steel manufacturing facilities; comments due by 10-11-01; published 7-13-01

Air pollution control:

- State operating permits programs—
- Arizona; comments due by 10-10-01; published 9-10-01

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

- Various States; comments due by 10-10-01; published 9-10-01

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

- Various States; comments due by 10-10-01; published 9-10-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

- Alabama; comments due by 10-11-01; published 9-11-01

California; comments due by 10-9-01; published 8-7-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

- California; comments due by 10-12-01; published 9-12-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

- California; comments due by 10-12-01; published 9-12-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

- Colorado; comments due by 10-11-01; published 9-11-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

- Colorado; comments due by 10-11-01; published 9-11-01
- Delaware; comments due by 10-9-01; published 9-7-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

- Maryland; comments due by 10-9-01; published 9-7-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

- Maryland; comments due by 10-9-01; published 9-7-01
- New Jersey; comments due by 10-11-01; published 9-11-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

- Pennsylvania; comments due by 10-9-01; published 9-6-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and

- promulgation; various States:
Pennsylvania; comments due by 10-9-01; published 9-6-01
- ENVIRONMENTAL PROTECTION AGENCY**
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 10-10-01; published 9-10-01
- ENVIRONMENTAL PROTECTION AGENCY**
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 10-10-01; published 9-10-01
- ENVIRONMENTAL PROTECTION AGENCY**
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 10-11-01; published 9-11-01
- ENVIRONMENTAL PROTECTION AGENCY**
Air quality implementation plans; approval and promulgation; various States:
Texas; comments due by 10-9-01; published 9-7-01
- ENVIRONMENTAL PROTECTION AGENCY**
Hazardous waste program authorizations:
District of Columbia; comments due by 10-10-01; published 9-10-01
- ENVIRONMENTAL PROTECTION AGENCY**
Hazardous waste; program authorizations:
District of Columbia; comments due by 10-10-01; published 9-10-01
- ENVIRONMENTAL PROTECTION AGENCY**
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 10-9-01; published 9-6-01
- ENVIRONMENTAL PROTECTION AGENCY**
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 10-11-01; published 9-11-01
- ENVIRONMENTAL PROTECTION AGENCY**
Water supply:
National primary drinking water regulations—
Public notification and consumer confidence report rules; revisions; comments due by 10-9-01; published 9-7-01
- FEDERAL COMMUNICATIONS COMMISSION**
Frequency allocations and radio treaty matters:
Mobile satellite service providers; flexible use of assigned spectrum over land-based transmitters; comments due by 10-11-01; published 9-13-01
New advanced mobile and fixed terrestrial wireless services; frequencies below 3 GHz; comments due by 10-11-01; published 9-13-01
Radio services, special:
Private land mobile services—
Low power operations in 450-470 MHz band; applications and licensing; comments due by 10-12-01; published 9-12-01
- FEDERAL TRADE COMMISSION**
Consumer information; safeguard standards; comments due by 10-9-01; published 8-7-01; comments due by 10-9-01; published 8-7-01
- GENERAL SERVICES ADMINISTRATION**
Federal Acquisition Regulation (FAR):
Trademarks for government products; comments due by 10-9-01; published 8-9-01
- HOUSING AND URBAN DEVELOPMENT DEPARTMENT**
Practice and procedure:
Federal National Mortgage Association and Federal Home Loan Mortgage Corporation—
Flood insurance; comments due by 10-12-01; published 9-12-01
- INTERIOR DEPARTMENT**
Endangered and threatened species:
Florida manatee; additional protection areas; comments due by 10-9-01; published 8-10-01
Hearings; comments due by 10-9-01; published 8-29-01
- JUSTICE DEPARTMENT**
Immigration:
Immigration examinations fee adjustment; comments due by 10-9-01; published 8-8-01
- LIBRARY OF CONGRESS**
Copyright arbitration royalty panel rules and procedures:
Digital performance of sound recordings; reasonable rates and terms determination; comments due by 10-12-01; published 9-27-01
- NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**
Federal Acquisition Regulation (FAR):
Trademarks for government products; comments due by 10-9-01; published 8-9-01
- TRANSPORTATION DEPARTMENT**
Drawbridge operations:
Massachusetts; comments due by 10-11-01; published 9-11-01
Ports and waterways safety:
Long Island Sound et al., CT and NY; safety zones; comments due by 10-9-01; published 8-7-01
- TRANSPORTATION DEPARTMENT**
Airworthiness directives:
Boeing; comments due by 10-9-01; published 8-23-01
- TRANSPORTATION DEPARTMENT**
Airworthiness directives:
Goodyear Tire & Rubber Co.; comments due by 10-12-01; published 9-4-01
- TRANSPORTATION DEPARTMENT**
Airworthiness directives:
McDonnell Douglas; comments due by 10-9-01; published 8-24-01
Rolls-Royce plc; comments due by 10-9-01; published 8-9-01
- TRANSPORTATION DEPARTMENT**
Airworthiness directives:
Rolls-Royce plc.; comments due by 10-9-01; published 8-10-01
- TRANSPORTATION DEPARTMENT**
Class E airspace; comments due by 10-9-01; published 8-23-01; comments due by 10-9-01; published 8-23-01
VOR Federal airways and jet routes; comments due by 10-11-01; published 9-11-01; comments due by 10-11-01; published 9-11-01
- TRANSPORTATION DEPARTMENT**
Processor-based signal and train control systems; development and use standards; comments due by 10-9-01; published 8-10-01; comments due by 10-9-01; published 8-10-01
- TRANSPORTATION DEPARTMENT**
Clean Fuels Formula Grant Program; comments due by 10-12-01; published 8-28-01; comments due by 10-12-01; published 8-28-01
- TRANSPORTATION DEPARTMENT**
Insurer reporting requirements:
Insurers required to file reports; list; comments due by 10-9-01; published 8-7-01
- TRANSPORTATION DEPARTMENT**
Hazardous materials:
Hazardous materials transportation—
Loading, unloading, and storage; comments due by 10-12-01; published 6-14-01
- TREASURY DEPARTMENT**
Dog and Cat Protection Act; implementation; prohibitions and penalties; comments due by 10-9-01; published 8-10-01; comments due by 10-9-01; published 8-10-01
- VETERANS AFFAIRS DEPARTMENT**
Adjudication; pensions, compensation, dependency, etc.:

Radiation-risk activities; presumptive service connection for certain diseases; comments due by 10-9-01; published 8-8-01

Correction; comments due by 10-9-01; published 8-31-01

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-

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S. 1424/P.L. 107-45

To amend the Immigration and Nationality Act to provide permanent authority for the admission of "S" visa nonimmigrants. (Oct. 1, 2001; 115 Stat. 258)

Last List October 2, 2001

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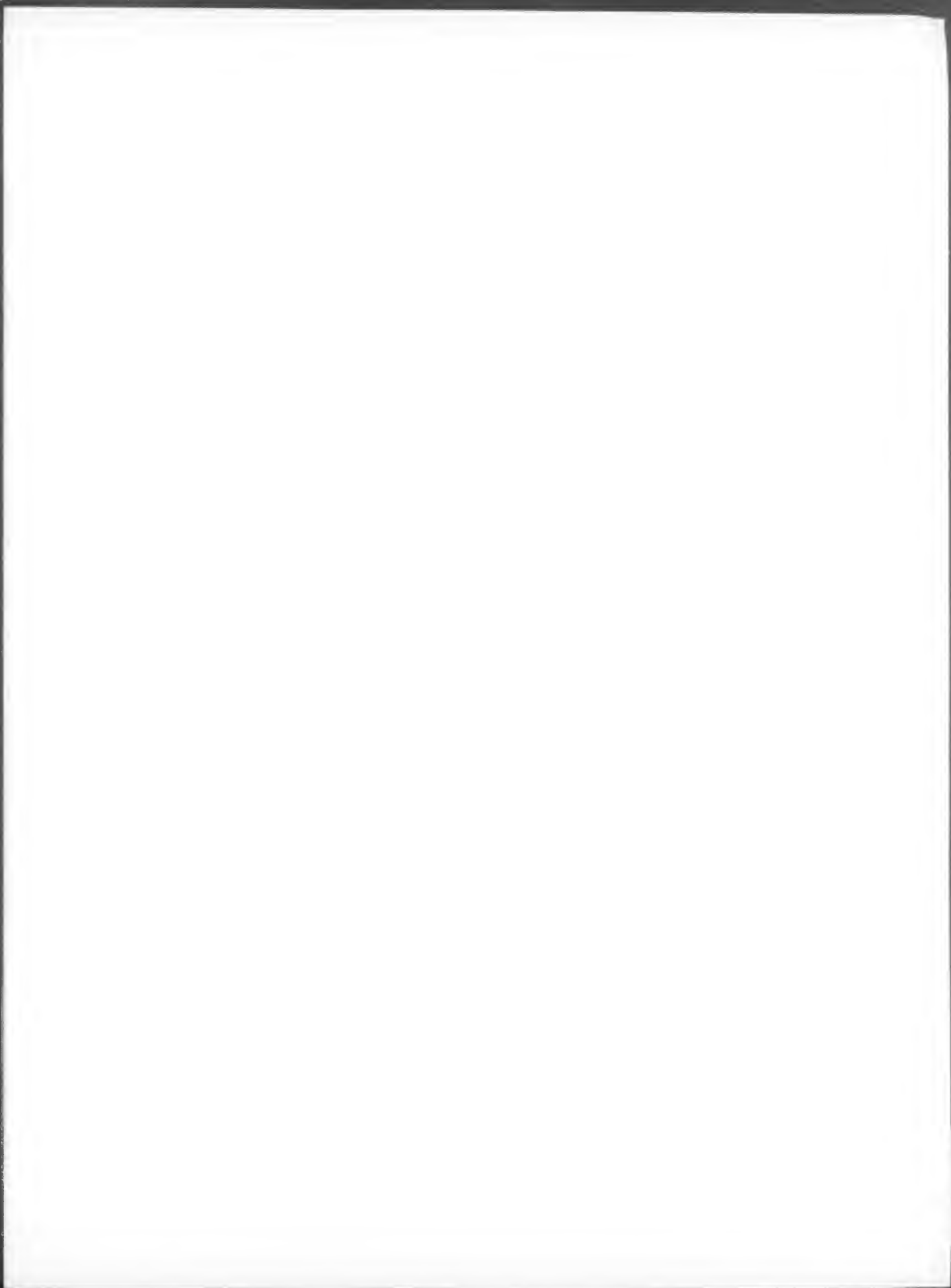
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