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WASHINGTON, DC

WHEN: November 18, 1997 at 9:00 am.
WHERE: Office of the Federal Register
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Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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

Rules and Regulations

Federal Register
Vol. 62, No. 215
Thursday, November 6, 1997

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its rules of practice and procedure to change its time limits for filing appeals and petitions for review of initial decisions issued by MSPB judges. The amendments to the time limits for filing appeals are intended to ensure that an appellant has a full 30 days to file after the event from which the time period begins to run. The amendment to the time limit for filing a petition for review is intended to ensure that a petitioner has a full 30 days to file after the date of receipt of the initial decision issued by the judge. The purpose of these amendments is to provide guidance to the parties to MSPB cases and their representatives regarding filing requirements. The Board is simultaneously amending its rules at 5 CFR part 1209 with respect to the time limits for filing whistleblower appeals.

EFFECTIVE DATE: November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board is authorized by 5 U.S.C. 1204(h) to promulgate regulations to carry out its functions and has used this authority since its inception to prescribe time limits for filing appeals with the Board. Prior to this amendment, the regulation at 5 CFR 1201.22(b), prescribing time limits for filing an appeal, required that an appeal of an agency action be filed no later than 30 days after the effective date of the action or, where the appeal is from a final or reconsideration decision that does not set an effective date, no later than 35 days after the date of issuance of the agency's decision. In establishing the 35-day time limit where the appeal is from a final or reconsideration decision that does not set an effective date, the Board, in effect, was providing the same 30-day time period for filing as in an appeal of an action with an effective date by allowing 5 additional days after the date of issuance of the decision for it to be mailed and received.

Where the 35-day time limit applies and there is a delay by the agency in mailing the decision after it is issued, and/or a delay by the U.S. Postal Service that results in more than 5 days elapsing between issuance of the decision and receipt by the appellant, an appellant could have less than 30 days to file an appeal with MSPB. Should an appellant not receive the agency's decision until after the 35-day time period for filing has expired, any appeal may be dismissed as untimely.

In order to ensure that each appellant, regardless of the nature of the action or decision being appealed, has a full 30 days to file after the event from which the time period begins to run, the Board is amending its regulation at 5 CFR 1201.22(b) to require that an appeal be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of receipt of the agency's decision, whichever is later.

The Board is making corresponding amendments to 5 CFR 1201.27(b), regarding the time limit for filing individual appeals after a judge has denied a request for hearing as a class appeal, and 5 CFR 1201.154(a), regarding the time limit for filing an appeal in which discrimination is alleged (a mixed case appeal).

Prior to this amendment, the regulation at 5 CFR 1201.114(d), prescribing the time limit for filing a petition for review of a judge's initial decision, required that the petition for review be filed with the Clerk of the Board within 35 days after the initial decision is issued. This regulation was based on the statutory requirement at 5 U.S.C. 7701(e)(1)(A) that a petition for review be filed no later than 30 days after the party's receipt of the initial decision. Again, the Board was allowing in its regulation an additional 5 days from the date of issuance of the initial decision for mailing and receipt by the parties.

To ensure that every party has a full 30 days from the date of receipt of an initial decision to file a petition for review of that decision, the Board is amending its regulation at 5 CFR 1201.114(d) to require that a petition for review be filed within 35 days after the initial decision is issued or, if the petitioner shows that the initial decision was received more than 5 days after the date of issuance, within 30 days after the date the petitioner received the initial decision. The Board is making conforming amendments to 5 CFR 1201.113(a) and (d) by removing the references to a 35-day time limit for filing.

The Board is *not* amending 5 CFR 1201.113 in the material that precedes paragraph (a), which states that the initial decision of the judge will become final 35 days after issuance. Where no petition for review of an initial decision is filed, and the Board does not reopen on its own motion, there must be a date certain when the case is closed and the initial decision becomes the final decision of the Board. Such a finality date is also needed, for example, to determine when the time starts running for the filing of a petition for review of a final Board decision in a mixed case by the Equal Employment Opportunity Commission under 5 U.S.C. 7702, a petition for judicial review of a final Board decision under 5 U.S.C. 7703, or a motion for attorney fees under 5 CFR 1201.203(d).

As a result of these amendments to the petition for review provisions, initial decisions issued by MSPB judges will continue to show a finality date, which will be the date 35 days after the date of issuance of the initial decision. That date, however, will no longer be the last day on which a petition for review can be filed if the petitioner can show that the initial decision was received more than 5 days after the date it was issued. In that event, the time limit of 30 days after the date of receipt will apply.

The Board is making a corresponding amendment to the regulation at 5 CFR 1201.154(d), regarding the time limit for filing a petition for review of a final decision on a grievance in which discrimination is alleged.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

§ 1201.22 [Amended]

2. Section 1201.22 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) *Time of filing.* An appeal must be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of receipt of the agency's decision, whichever is later. The time for filing is computed in accordance with §1201.23 of this part. A response to an appeal must be filed within 20 days of the date of the Board's acknowledgment order.

* * * * *

§ 1201.27 [Amended]

3. Section 1201.27 is amended at paragraph (b) by revising the second sentence to read as follows:

* * * * *

(b) * * * If the judge denies the request, the appellants affected by the decision may file individual appeals within 30 days after the date of receipt of the decision denying the request to be heard as a class appeal. * * *

* * * * *

§ 1201.113 [Amended]

4. Section 1201.113 is amended by revising paragraphs (a) and (d) to read as follows:

* * * * *

(a) *Exceptions.* The initial decision will not become final if any party files a petition for review within the time limit for filing specified in § 1201.114 of this part, or if the Board reopens the case on its own motion.

* * * * *

(d) *Extensions.* The Board may extend the time limit for filing a petition for good cause shown as specified in § 1201.114 of this part.

* * * * *

§ 1201.114 [Amended]

5. Section 1201.114 is amended at paragraph (d) by revising the first sentence to read as follows:

* * * * *

(d) * * * Any petition for review must be filed within 35 days after the date of issuance of the initial decision or, if the petitioner shows that the initial decision was received more than 5 days after the date of issuance, within 30 days after the date the petitioner received the initial decision. * * *

* * * * *

§ 1201.154 [Amended]

6. Section 1201.154 is amended by revising paragraph (a) and the first sentence of paragraph (d) to read as follows:

* * * * *

(a) Where the appellant has been subject to an action appealable to the Board, he or she may either file a timely complaint of discrimination with the agency or file an appeal with the Board no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of receipt of the agency's decision on the appealable action, whichever is later.

* * * * *

(d) If the appellant has filed a grievance with the agency under its negotiated grievance procedure in accordance with 5 U.S.C. 7121, he or she may ask the Board to review the final decision under 5 U.S.C. 7702 within 35 days after the date of issuance of the decision or, if the appellant shows that the decision was received more than 5 days after the date of issuance, within 30 days after the date the appellant received the decision.

* * *

* * * * *

Dated: October 31, 1997.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 97–29311 Filed 11–5–97; 8:45 am]

BILLING CODE 7400–01–U

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1209

Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its rules of practice and procedure for whistleblower appeals to change the time limits for filing. The amendment to the time limit for filing an individual right of action (IRA) appeal is intended to ensure that an appellant has the full 60 days required by law to file after being provided notification by the Special Counsel that an investigation has been terminated. The amendment to the time limit for filing a whistleblower appeal after a judge's ruling on a stay request is intended to ensure that an appellant has a full 30 days to file after receipt of the ruling. The purpose of these amendments is to provide guidance to the parties to MSPB cases and their representatives regarding filing requirements. The Board is simultaneously amending its rules at 5 CFR part 1201 with respect to the time limits for filing other appeals and petitions for review.

EFFECTIVE DATE: November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The provisions of the Whistleblower Protection Act of 1989 (Pub. L. 101–12) governing a whistleblower's filing of an individual right of action (IRA) appeal with the Board require that such an appeal be filed no more than 60 days after notification by the Special Counsel that an investigation into the whistleblower's allegations has been terminated. 5 U.S.C. 1214(a)(3)(A)(ii) and 1221(a). The statutory language does not specify whether the 60-day period begins to run from the date of the Special Counsel's notice or the date of the whistleblower's receipt of that notice.

Prior to this amendment, the Board's implementing regulation at 5 CFR 1209.5(a) required that an IRA appeal be filed no later than 65 days after the date of issuance of the Office of Special Counsel's written notification that it was terminating its investigation of the appellant's allegations. This established a clear date on which the time for filing began to run and allowed an additional 5 days for the notice to be mailed and received by an appellant before the 60-day statutory period began.

Delay by the Office of Special Counsel in mailing the notice and/or a delay by the U.S. Postal Service could result in an appellant having less than 60 days to file an appeal with MSPB. If an appellant did not receive the Special Counsel's notice until after the 65-day time period for filing expired, an IRA appeal might be dismissed as untimely.

To ensure that each IRA appellant has a full 60 days for filing with the Board after receipt of a notice from the Special Counsel, the Board is amending its regulation at 5 CFR 1209.5(a)(1) to require that an IRA appeal be filed no later than 65 days after the date of issuance of the Office of Special Counsel's written notification or, if the

appellant shows that the Special Counsel's notification was received more than 5 days after the date of issuance, within 60 days after the date the appellant received the Special Counsel's notification.

This regulatory action does not affect the provisions of law and regulation permitting an appellant to file an IRA appeal with the Board anytime after 120 days have passed since filing with the Special Counsel if he or she has not received notification that the Special Counsel will seek corrective action from the Board. 5 U.S.C. 1214(a)(3)(B) and 5 CFR 1209.5(a)(2).

A whistleblower affected by an action that is directly appealable to the Board may choose to seek corrective action from the Special Counsel first or may file an otherwise appealable action (OAA) appeal directly with the Board. 5 U.S.C. 1221(b) and 5 CFR 1209.5(b). An appellant who chooses to go to the Special Counsel first is subject to the same time limit for filing as an IRA appellant under the amended 5 CFR 1209.5(a)(1). An appellant who appeals directly to the Board is subject to the same time limit that applies to other appeals under the Board's regulation at 5 CFR 1201.22(b), which is being amended simultaneously with this amendment. Under the amended 5 CFR 1201.22(b), an appellant must file no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of receipt of the agency's decision, whichever is later.

The Board is also amending its regulation at 5 CFR 1209.5(c) to ensure that an appellant who has filed a stay request before filing a whistleblower appeal (IRA or OAA) has a full 30 days to file after the date the appellant receives the judge's ruling on the stay request. This amendment corresponds to the amendments being made simultaneously to various filing requirements in 5 CFR part 1201.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1209

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1209 as follows:

PART 1209—[AMENDED]

1. The authority citation for part 1209 continues to read as follows:

Authority: 5 U.S.C. 1204, 1221, 2302(b)(8), and 7701.

§1209.5 [Amended]

2. Section 1209.5 is amended by revising paragraph (a)(1) and the first sentence of paragraph (c) to read as follows:

* * * * *

(a) * * *

(1) No later than 65 days after the date of issuance of the Office of Special Counsel's written notification to the appellant that it was terminating its investigation of the appellant's allegations or, if the appellant shows that the Special Counsel's notification was received more than 5 days after the date of issuance, within 60 days after the date the appellant received the Special Counsel's notification; or,

* * * * *

(c) * * * Where an appellant has filed a request for a stay with the Board without first filing an appeal of the action, the appeal must be filed within 30 days after the date the appellant receives the order ruling on the stay request. * * *

Dated: October 31, 1997.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 97–29312 Filed 11–5–97; 8:45 am]

BILLING CODE 7400–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–95–AD; Amendment 39–10192; AD 97–23–04]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires replacing the fuel tank vent valves with modified fuel tank vent valves. This AD is the result of mandatory continued airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent the fuel tank inward vent valve from freezing, which, if followed by a cold soak at altitude, could result in wing airfoil distortion and structural damage with consequent degradation of the airplane's handling qualities.

DATES: Effective December 1, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 1, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–95–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–95–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports an instance of abnormal automatic engagement of the fuel booster pumps during normal operation of a Pilatus Model PC–12 airplane. The FOCA's investigation reveals that the fuel tank inward vent valves may fail in the closed position under certain conditions. Moisture ingestion, followed by cold soak, can lead to the fuel tank inward vent valve freezing. This condition, if not corrected, could result in wing airfoil distortion and structural damage with consequent degradation of the airplane's handling qualities.

Relevant Service Information

Pilatus issued Service Bulletin No. 28–003, Revision 1, dated September 30, 1997, which specifies procedures for replacing the fuel tank vent valves with modified fuel tank vent valves.

The FOCA of Switzerland classified this service bulletin as mandatory and

issued Swiss AD HB 97–432A, dated October 3, 1997, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA of Switzerland; reviewed all available information, including the service bulletin referenced in this document; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design registered for operation in the United States, the FAA is issuing an AD. This AD requires replacing the fuel tank vent valves with modified fuel tank vent valves. Accomplishment of the replacement is required in accordance with Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997.

Determination of the Effective Date of the AD

Since a situation exists (possible wing airfoil distortion and structural damage with consequent degradation of the airplane's handling qualities) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications 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 will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–95–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–23–04 Pilatus Aircraft, LTD.: Amendment 39–10192; Docket No. 97–CE–95–AD.

Applicability: Models PC–12 and PC–12/45 airplanes; serial numbers 101 through 186, 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 within the next 10 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent the fuel tank inward vent valve from freezing, which, if followed by a cold soak at altitude, could result in wing airfoil distortion and structural damage with consequent degradation of the airplane's handling qualities, accomplish the following:

(a) Replace the fuel tank vent valves with modified fuel tank vent valves in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) The replacement required by this AD shall be done in accordance with Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swiss AD HB 97–432A, dated October 3, 1997.

(e) This amendment (39–10192) becomes effective on December 1, 1997. Issued in Kansas City, Missouri, on October 29, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29236 Filed 11–5–97; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI38–01–6734; FRL–5884–1]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving requested State Implementation Plan (SIP) revisions submitted by the State of Michigan for the purpose of transferring the authority of the Michigan Air Pollution Control Commission (Commission) to the Director of the Michigan Department of Natural Resources (MDNR) and subsequently transferring the authority of the Director of MDNR to the Director of the Michigan Department of Environmental Quality (MDEQ). Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

DATES: This rule is effective: December 8, 1997.

ADDRESSES: Copies of the Michigan SIP revision request and EPA's analysis are available for inspection during normal business hours at the following location: EPA Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Laura Gerleman, Air Programs Branch, Permits and Grants Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5703.

Copies of the State of Michigan's final authorization revision application are available during normal business hours at the following addresses for inspection and copying: Library of Michigan, Government Documents Section, 717 West Allegan, Lansing, Michigan; Olson Library, Northern Michigan University, Harden Circle Drive, Marquette, Michigan; Detroit Public Library Main Branch, Sociology and Economics Department, 5201 Woodward Avenue, Detroit, Michigan. To arrange for access to the materials in Lansing, call (517) 373–9489 between 9 a.m. and 6 p.m. on Mondays through Saturdays and between 12 p.m. and 4 p.m. on Sundays (Eastern time); in Marquette, call (906) 227–2260 between 8 a.m. and 12 a.m. on Mondays through Thursdays, between 8 a.m. and 9 p.m. on Fridays, and between 10 a.m. and 6 p.m. on Sundays (Eastern time); in Detroit, call (313) 833–1440 between 9:30 a.m. and 5:30 p.m. on Tuesdays and Thursdays through Saturdays, and between 1 p.m. and 9 p.m. on Wednesdays (Eastern time).

SUPPLEMENTARY INFORMATION:

A. Executive Order 1991–31

On November 8, 1991, Governor John Engler of Michigan signed Executive Order 1991–31 which, inter alia, abolished the Commission and transferred the authority of the Commission to the Director of MDNR. The State of Michigan submitted to EPA under a December 13, 1994 cover letter, a SIP revision request containing the transfer of authority of the Commission to the Director of MDNR. The EPA deemed the submittal complete in a February 16, 1995 letter to Roland Harmes, Director, MDNR.

B. Executive Order 1995–18

On July 31, 1995, Governor Engler signed Executive Order 1995–18 which, *inter alia,* elevated eight program divisions and two program offices from within MDNR to the MDEQ, effective October 1, 1995. The authority given to the Director of MDNR in Executive Order 1991–31 was conferred upon the Director of MDEQ in Executive Order 1995–18, with the exception of administrative appeals decisions.

The State of Michigan submitted Executive Order 1995–18 to EPA under a January 19, 1996 cover letter as a supplement to the December 13, 1994 SIP revision.

C. Authority

On March 28, 1997, EPA proposed to approve Michigan's requested SIP revisions as reorganizations of Michigan's environmental agencies wherein the authorities of the Director of the Commission under the SIP have been conferred upon the Director of MDEQ by Executive Order. See 62 FR 14843. The EPA did not receive any public comment on the proposal. In this notice, EPA is taking final action to approve these transfers of authority for the State of Michigan.

The EPA notes that it is currently reviewing the Michigan Environmental Audit Privilege and Immunity Law, Public Act 132 of 1996, and its potential impact on Michigan's federally delegated and authorized programs, including programs under the Federal Clean Air Act (CAA). The EPA's approval only addresses the requested SIP revisions submitted by Michigan that result from Executive Order 1991–31 and Executive Order 1995–18. The EPA's approval of requested revisions to Michigan's SIP arising out of these two Executive Orders does not express any viewpoint on the question of whether there are legal deficiencies in Michigan's SIP resulting from Public Act 132 of 1996.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

Delegation of the Governor's authority under the CAA does not impose any new requirements on small entities. EPA certifies that this delegation will not affect a substantial number of small entities.

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in this **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 5, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: August 13, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642(q).

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)109 to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(109) On December 13, 1994 and January 19, 1996, Michigan submitted correspondence and Executive Orders 1991–31 and 1995–18 which indicated that the executive branch of government had been reorganized. As a result of the reorganization, delegation of the Governor's authority under the Clean Air Act was revised. The Environmental Protection Agency's approval of these Executive Orders is limited to those provisions affecting air pollution control. The Air Pollution Control Commission was abolished and its authority was initially transferred to the Director of the Michigan Department of Natural Resources (DNR). Subsequently, the Michigan Department of Natural Resources of Environmental Quality (DEQ) was created by elevating eight program divisions and two program offices previously located within the DNR. The authority then earlier vested to the Director of the Michigan DNR was then transferred to the Director of the Michigan DEQ with the exception of some administrative appeals decisions.

(i) Incorporation by reference.

(A) State of Michigan Executive Order 1991–31 Commission of Natural Resources, Department of Natural Resources, Michigan Department of Natural Resources Executive Reorganization. Introductory and concluding words of issuance and Title I: General; Part A: Sections 1, 2, 4 and 5, Part B. Title III: Environmental Protection; Part A: Sections 1 and 2, Part B. Title IV: Miscellaneous; Parts A and B, Part C: Sections 1, 2, 4, Part D. Signed by John Engler, Governor, November 8, 1991. Filed with the Secretary of State November 8, 1991. Effective January 7, 1992.

(B) State of Michigan Executive Order No. 1995–18 Michigan Department of Environmental Quality, Michigan Department of Natural Resources Executive Reorganization. Introductory and concluding words of issuance. Paragraphs 1, 2, 3(a) and (g), 4, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18. Signed by John Engler, Governor, July 31, 1995. Filed with the Secretary of State on August 1, 1995. Effective September 30, 1995.

[FR Doc. 97–29395 Filed 11–5–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 091–4050a; FRL–5918–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correcting amendment.

SUMMARY: This action corrects an interim final rule, which was published on January 28, 1997, regarding EPA conditional approval of Pennsylvania's enhanced inspection and maintenance (I/M) program. This action pertains to the consequences in the event that the Pennsylvania enhanced I/M program failed to commence per the deadlines set forth in EPA's interim final rule. EPA is taking this action for the purposes of consistency with rulemaking actions EPA has since taken on other states' inspection and maintenance programs. EPA is correcting its January 28 final rule through a direct final rule, without prior proposal, because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comment from the public. A detailed description of the correction is set forth in the **SUPPLEMENTARY INFORMATION** section, below. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on a parallel proposed rule, published elsewhere in this **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by December 8, 1997. If no adverse comments to this action is received, the action will become effective January 5, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section (Mailcode 3AT21), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Relevant documents are also available at the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 566–2176.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1997 (62 FR 4004), EPA published an interim final rule approving a State Implementation Plan (SIP) revision submitted by Pennsylvania for an enhanced inspection and maintenance program for all subject areas in the Commonwealth.

Need for Correction

As published, the direct final rule contains an error, which may prove to be misleading. Therefore, EPA's action today serves to clarify that rulemaking, as described in the January 28, 1997 document, the National Highway Safety Designation Act (NHSDA) directs EPA to grant interim approval for a period of 18 months to approvable decentralized I/M submittals. The NHSDA requires such a state to gather data on the program during that time, and to assess the effectiveness of the program at the end of the 18-month period. Therefore, EPA believes that Congress intended for programs to be implemented as soon as possible, and that these programs must commence testing by November 15, 1997, so that at least six months worth of operational data can be collected for the purpose of evaluating the program.

Therefore, EPA set a strict timetable for states to begin testing under the NHSDA, and conditioned approval of Pennsylvania's I/M plan upon start up by November 15, 1997. EPA's January 28, 1997 (62 FR 4004) interim approval of Pennsylvania's plan was conditioned upon five major deficiencies—including start up of the program. In the Background section of the January 1997 rulemaking for Pennsylvania, EPA stated that if the Commonwealth failed to start its program according to schedule, the conditional interim approval would convert to a disapproval after a finding letter was sent by EPA to the state. However, in the Public Comments/Response to Comments section of EPA's January 1997 rule, EPA conversely stated that all conditions of the conditional approval automatically convert to disapprovals, by operation of law, if a state fails to remedy a deficiency upon which the plan is conditioned (by the date certain established under the conditional approval). EPA further added that in the event any condition is not fulfilled in a timely fashion, conversion to a disapproval is automatic. EPA would subsequently send a letter to the state notifying the state and the public that the approval had converted to a disapproval. These two sections seem to be inconsistent, and their meaning could be easily misinterpreted, if the responses in the Public Comments/ Response to Comments section are applied to the start condition, in addition to the other noted major deficiencies.

Correction of Publication

Although it is unclear in the January 28, 1997 rulemaking, EPA did not intend for I/M program implementation (or start up) to be a condition, the failure of which would automatically convert the Commonwealth's SIP approval to a disapproval. The I/M program start up condition is not imposed pursuant to a commitment to correct a deficient SIP under section 110(k)(4) of the Clean Air Act. Instead, EPA is imposing the start date condition under its general SIP approval authority under section 110(k)(3) of the Clean Air Act, which does not require automatic conversion in the event the condition is not satisfied in a timely manner [see EPA's Interim Final Rule approving Virginia's enhanced I/M program (62 FR 26746)] .

Unlike the other specified conditions of Pennsylvania's interim approval, which are explicit conditions under section 110(k)(4) of the Clean Air Act, and which will trigger an automatic disapproval should the Commonwealth fail to meet its commitments, the start date provision will trigger a disapproval upon EPA's notification to the Commonwealth via letter that the program did not start per the specified deadlines imposed by EPA in its final rule—by no later than November 15, 1997 for the five-county Philadelphia area and no later than November 15, 1999 for the remaining 16 counties in Pennsylvania. In the event the program did not start in a timely manner, such a letter would notify the Commonwealth that this rulemaking action has been converted to a disapproval and that the first sanction associated with such a disapproval has been triggered, per the proposed interim final determination document published on October 3, 1996 (61 FR 31598). As explained in that document, the 18-month sanctions clock for Pennsylvania's I/M program SIP has already expired, with sanctions suspended while EPA undertook SIP rulemaking action.

Although the January 28, 1997 final rule does not make the distinction clear between program start up and the other conditions placed upon the interim SIP approval, EPA intended to distinguish the failure for timely start up from all other major deficiencies, as explained above. Accordingly, the publication on January 28, 1997 (62 FR 4004) of 40 CFR 52.2026 is being amended by revising paragraph (a) and (a)(1) to address the start date condition.

Final Action

EPA is today correcting an error in its January 28, 1997 interim conditional approval of Pennsylvania's enhanced I/M program SIP revision. EPA is taking this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse public comments on this action. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 5, 1998 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this correction action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the parallel proposal action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 5, 1998.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action''

and, is therefore not subject to review by the Office of Management and Budget. In addition, this correction action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with state officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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

However, conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that a state is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this correction action must be filed in the United States Court of Appeals for the appropriate circuit by January 5, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 29, 1997.

William T. Wisnieski,

Acting Regional Administrator, Region III.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2026 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 52.2026 Conditional Approval.

* * * * *

(a) If the Commonwealth fails to start its program according to the schedule it provided (i.e., by no later than November 15, 1997 for the five-county Philadelphia area and no later than November 15, 1999 for the remaining sixteen counties), this conditional approval will convert to a disapproval after EPA sends a letter to the state. If the Commonwealth fails to satisfy the following conditions per the deadlines listed within each condition, this conditional approval will automatically convert to a disapproval as explained under section 110(k) of the Clean Air Act. The conditions for approvability are as follows:

(1) By no later than September 15, 1997, a notice must be published in the *Pennsylvania Bulletin* by the Secretary of the Pennsylvania Department of Transportation which certifies that the enhanced I/M program is required in order to comply with Federal law and also certifies the geographic areas which are subject to the enhanced I/M program (the geographic coverage must be identical to that listed in Appendix A–1 of the March 22, 1996 SIP submittal), and certifies the commencement date of the enhanced I/M program.

* * * * *

[FR Doc. 97–29388 Filed 11–5–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5917–9]

Removal of Requirement in Gasoline Deposit Control Additives Rule Regarding the Identification of the Oxygenate Content of Transferred Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending the gasoline deposit control additives program, (the ''detergent rule'') to remove the requirement that certain information on the oxygenate content of transferred gasoline must be included in the gasoline's product transfer document. EPA is taking this action to avoid unnecessary disruption to the gasoline distribution system and because the Agency believes that it will result in no negative environmental impact.

In the proposed rules section of today's **Federal Register**, EPA is proposing the same action covered by this direct final rule (*i.e.*, to amend the detergent rule to remove the requirement that certain information on the oxygenate content of transferred gasoline must be included in the gasoline's product transfer document), as well as several other actions impacting the detergent rule. If adverse comment or a request for a public hearing is received on this direct final rule, EPA will withdraw the direct final rule and address the comments received in a subsequent final rule on the related proposed rule. No additional

opportunity for public comment on this removal of certain detergent rule product transfer document oxygenate information will be provided.

DATES: This action will become effective on January 5, 1998, unless notice is received by December 8, 1997 from someone who wishes to submit adverse comment or requests an opportunity for a public hearing. If such notice is received, EPA will withdraw this direct final rule, and a timely notice will be published in the **Federal Register** to indicate the withdrawal.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–91–77, at the following address: Air Docket Section (LE–131), room M–1500, 401 M Street SW, Washington, DC 20460; phone (202) 260–7548; fax (202) 260–4000. The Agency also requests that a separate copy be sent to the contact person listed below. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m. Monday through Friday, except on government holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket materials.

This direct final rule is also available electronically on the day of publication from the Office of the Federal Register internet Web site listed below. A prepublication electronic copy of this notice is also available from the EPA Office of Mobile Sources Web site listed below. This service is free of charge, except for any cost that you already incur for internet connectivity.

Federal Register Web Site:
http://www.epa.gov/docs/fedrgstr/EPA–AIR/ (Either select desired date or use Search feature.)

Office of Mobile Sources Web Site:
http://www.epa.gov/OMSWWW/ (Look in ''What's New'' or under the specific rulemaking topic.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

FOR FURTHER INFORMATION CONTACT: Judith Lubow, U.S. EPA, Office of Enforcement and Compliance Assurance, Western Field Office, 12345 West Alameda Parkway, Suite 214, Lakewood, CO 80228; Telephone: (303) 969–6483, FAX (303) 969–6490.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Regulated Entities

Entities potentially regulated by this action are those involved with the production, distribution, and sale of gasoline and gasoline detergent additives. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Gasoline refiners and importers, Gasoline terminals, Detergent blenders, Gasoline truckers, Gasoline retailers and wholesale purchaser-consumers, and Detergent manufacturers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 80.161(a), the detergent certification requirements in § 80.161(b), the program controls and prohibitions in § 80.168, and other related program requirements in Subpart G, title 40, of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Introduction

Section 211(l) of the Clean Air Act (''CAA'') requires that, by January 1, 1995, all gasoline must contain detergent additives to prevent the accumulation of deposits in motor vehicle engines and fuel supply systems. This CAA section also requires EPA to promulgate specifications for the detergent additives. Detergent additives prevent the accumulation of engine and fuel supply system deposits that have adverse effects on vehicle emissions as well as on fuel economy and driveability.

In response to section 211(l)'s requirements, EPA published a Notice of Proposed Rulemaking (''NPRM'') on December 6, 1993 (59 FR 64213) proposing a detergent additives regulatory program. The detergent program was finalized in two parts. Final regulations for the interim detergent program, requiring the use of detergent additives in gasoline but not mandating specific detergent efficiency testing, were published on October 14, 1994 (59 FR 54678). Final regulations for the detergent certification program, mandating the use of certified detergents with specified detergent efficiency testing, were published on July 5, 1996 (61 FR 35310).

One important implementation issue that has arisen since the publication of the detergent certification rule concerns the requirement that the product transfer documents (PTDs) for gasoline transfers must identify all oxygenates found in the gasoline. 40 CFR 80.158(a)(5) and 80.171(a)(5). Members of the gasoline refining and distribution industry informed EPA that this requirement would, as an unintended consequence, significantly disrupt gasoline distribution. [1]

For the reasons described below, EPA exercised its enforcement discretion and announced by letter to the American Petroleum Institute (''API'') that it would temporarily not enforce the PTD oxygenate identification requirement pending resolution of the issue through a rulemaking or until September 3, 1997, whichever occurrence came first. [2] The Agency reserved the right to rescind the exercise of this enforcement discretion if it determined that restricted-use detergents were actually being certified or that the PTD oxygenate identification requirements otherwise became appropriate. The Agency further advised that if violations involving the improper use of oxygenate-restricted detergents occurred, parties wishing to successfully assert an affirmative defense to liability for such violations might need to provide information establishing the appropriate oxygenate content of the gasoline in question. Subsequently, EPA extended this exercise of enforcement discretion until implementation of this Direct Final Rule which removes the specified PTD

[1] Letter to Judith Lubow, Office of Enforcement and Compliance Assurance (OECA), EPA, from C.J. Krambuhl, Director, Manufacturing, Distribution, and Marketing, American Petroleum Institute (API), August 14, 1996, Docket item VI-–D–01.

[2] Letter to C.J. Krambuhl, API, from Steven A. Herman, Assistant Administrator, OECA, EPA, August 28, 1996, Docket item VII–C–01.

oxygenate requirement, or until December 31, 1997, whichever comes first. [3]

III. Removal of Identification Requirement of Specific Oxygenate Content on Gasoline Product Transfer Documents (PTDs)

A. Background

The gasoline detergent additive program requires all regulated parties transferring products controlled under the program to provide to the transferee PTDs giving pertinent information about the products transferred. (40 CFR 80.158 and 80.171) The products subject to the detergent program PTD requirements are gasoline, detergent additives, and additized components, such as ethanol, which are blended into gasoline after the refinery process (additized post-refinery components, or ''PRC''). For transfers of these regulated products, the PTDs must identify the parties to the transfer, the product being transferred, and other information about the product's regulatory status.

One such requirement is that PTDs for transferred gasoline must identify all oxygenates and PRCs contained in the gasoline. Further, if the gasoline is comprised of commingled fuels, all oxygenates and PRCs in the fuels comprising the commingled product must be identified. (40 CFR 80.158(a)(5) and 80.171(a)(5)) The purpose of this identification requirement is to alert the parties receiving the gasoline about the oxygenates and PRCs in the received product. This information would be useful to the recipient because, under the detergent certification program, parties may choose to additize gasoline with a detergent whose certification is restricted for use only with a specific oxygenate or with no oxygenate, or, in the case of fuel-specific certified detergents, for use in gasoline without PRCs. Thus, parties choosing to use such restricted-use detergents must know the oxygenate or PRC (''oxygenate'') content of the gasoline they intend to additize with these detergents. The PTD oxygenate identification requirement was intended to provide such information for the transferred gasoline.

In creating this identification requirement, the Agency was not aware that many parties did not know the specific oxygenate content of the gasoline they were transferring. EPA has since learned that, under typical industry practice prior to this requirement, parties commingled gasolines without knowledge of what (if any) specific ethers (a type of oxygenate) were present. Under the interim detergent rule's PTD requirements, no information about the oxygenate content of base gasoline was required. Parties were thus typically unaware of the specific ether content (in type and concentration) of commingled gasoline they received or possessed themselves. To comply with this new oxygenate identification requirement and to become knowledgeable about the ether status of their gasoline, parties would have to ascertain the ether content of received gasoline, stop commingling gasolines with different ether contents, or start testing all batches to determine such content. In any of these scenarios, gasoline distribution as presently practiced would be significantly disrupted.

It was never EPA's intention to disrupt gasoline distribution practices through the imposition of this PTD oxygenate identification requirement. Consequently, on August 28, l996, the Agency issued its first enforcement discretion letter temporarily suspending enforcement of this PTD requirement.

B. Rule Amendment

EPA does not believe that the benefits from the PTD requirement of providing oxygenate information to those parties who might choose to use oxygenate-restricted certified detergents warrants the resulting disruption to the gasoline distribution system. Therefore, the Agency is now amending the detergent program through this direct final rule to eliminate the requirement that PTDs for gasoline must identify the oxygenates found in the transferred product. At the same time, an NPRM is being published to address this issue with full notice and comment. Under the proposal, a new requirement would take the place of the deleted PTD identification requirement. The proposed requirement would mandate that those detergent-blending parties wishing to use oxygenate-restricted detergents must maintain documentation fully identifying the oxygenate content of the fuel into which the detergent was blended, as evidence that the fuel complied with the detergent's oxygenate use restriction. This direct final rule, however, is merely deleting the PTD oxygenate identification requirement. The Agency believes this is appropriate because no oxygenate-restricted detergents have been certified to date, so there is presently no potential for misadditization based on inappropriate use of oxygenate-restricted detergents through the deletion of this PTD requirement. Further, the deletion of this requirement until the issue is resolved through the NPRM process does not in any way affect the detergent rule's requirement of proper additization of gasoline in full compliance with all certification restrictions of the detergent being used.

IV. Environmental Impact

This rule is expected to have no negative environmental impact. Controls on proper gasoline additization are not affected by this rule. Further, no oxygenate-restricted detergents have been certified yet, so the absence of the specific PTD oxygenate information on transferred gasoline will have no impact on the proper additization of such gasoline.

V. Economic Impact and Impact on Small Entities

EPA has determined that this final rule will not have a significant impact on a substantial number of small entities because it removes a regulatory requirement with which parties would otherwise have to comply. This rule is not expected to result in any additional compliance cost to regulated parties and may be expected to reduce compliance cost. Therefore, a regulatory flexibility analysis has not been prepared.

VI. Public Participation and Effective Date

The Agency is publishing this action as a direct final rule because it views it as non-controversial and anticipates no adverse comments. However, in a separate Notice of Proposed Rulemaking (NPRM) in today's **Federal Register**, the Agency is proposing, among other things, to eliminate the PTD requirement should adverse or critical comments be filed. Thus, today's direct final action will be effective January 5, 1998 unless the Agency receives notice by December 8, 1997 that adverse or critical comments will be submitted or that a party requests the opportunity to submit such oral comments pursuant to section 307(d)(5) of the Clean Air Act, as amended.

If the Agency receives such comments, EPA will withdraw this action before the effective date by publishing a subsequent document. All public comments received will then be addressed in a subsequent final rule based on the NPRM published elsewhere in today's **Federal Register**. The Agency will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 5, 1998.

[3] Letter to C.J. Krambuhl, API, from Steven A. Herman, Assistant Administrator, OECA, EPA, September 4, 1997, Docket item VII–C–02.

VII. Executive Order 12866

Under Executive Order 12866,[4] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[5]

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VIII. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that the final rule promulgated today does not include a federal mandate as defined in UMRA. The rule does not include a federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

IX. Paperwork Reduction Act

The action in today's notice does not impose any new information collection burden. Implementation of this action would eliminate the existing requirement that product transfer documents (PTDs) for gasoline must identify the oxygenates present. No new information collection requirements would result from the implementation of the regulatory amendment which is the subject of this action. To the contrary, its implementation would eliminate a compliance burden from the majority of regulated parties.

The Office of Management and Budget (OMB) has previously approved the information collection requirements of the Regulation of Deposit Control Additives contained in 40 CFR Part 80 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0275 (EPA ICR Numbers 1655–01, 1655–02, and 1655–03).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR documents may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (mail code 2136); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and/or OMB number in any correspondence.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

XI. Statutory Authority

The statutory authority for the proposed action in this rule is granted to EPA by sections 114, 211(a), (b), (c), and (l), and 301 of the Clean Air Act as amended: 42 U.S.C. 7414, 7545(a), (b), (c) and (l), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline detergent additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: October 30, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

§ 80.158 [Amended]

2. Section 80.158(a) is amended as follows:

a. Paragraph (a)(5) is removed.

b. Paragraphs (a)(6) through (a)(10) are redesignated as paragraphs (a)(5) through (a)(9).

§ 80.171 [Amended]

3. Section 80.171(a) is amended as follows:

a. Paragraph (a)(5) is removed.

b. Paragraphs (a)(6) through (12) are redesignated as paragraphs (a)(5) through (a)(11).

[FR Doc. 97–29391 Filed 11–5–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AZ–001–BU; FRL–5917–4]

Clean Air Act Reclassification; Arizona-Phoenix Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finding that the Phoenix nonattainment area (Maricopa

[4] 58 FR 51736 (October 4, 1993).

[5] *Id.* at section 3(f)(1)–(4).

County, Arizona) has not attained the 1-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date in the Clean Air Act (CAA) for moderate ozone nonattainment areas, November 15, 1996. EPA is also denying Arizona's application for a one-year extension of the November 15, 1996 attainment date for the Phoenix area. The finding and denial are based on EPA's review of monitored air quality data from 1994 through 1996 for compliance with the 1-hour ozone NAAQS. As a result of the finding and denial, the Phoenix ozone nonattainment area will be reclassified by operation of law as a serious ozone nonattainment area on the effective date of this action. The effect of the reclassification will be to continue progress toward attainment of the 1-hour ozone NAAQS through the development of a new State implementation plan (SIP), due 12 months from the effective date of this action, addressing attainment of that standard by November 15, 1999.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning, AIR–2, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

Under sections 107(d)(1)(C) and 181(a) of the Clean Air Act (CAA), the Phoenix metropolitan area was designated nonattainment for the 1-hour ozone NAAQS and classified as ''moderate.'' See 56 FR 56694 (November 6, 1991). Moderate nonattainment areas were required to show attainment by November 15, 1996. CAA section 181(a)(1).

Pursuant to section 181(b)(2)(A) of the CAA, EPA has the responsibility for determining, within six months of an area's applicable attainment date, whether the area has attained the 1-hour ozone NAAQS.[1] Under section 181(b)(2)(A), if EPA finds that an area has not attained the 1-hour ozone NAAQS, it is reclassified by operation of law to the higher of the next higher classification or to the classification applicable to the area's design value at the time of the finding. CAA section 181(b)(2)(B) of the Act requires EPA to publish a notice in the **Federal Register** identifying areas which failed to attain the standard and therefore must be reclassified by operation of law.

If a state does not have the clean data necessary to show attainment of the NAAQS, it may apply, under CAA section 181(a)(5) of the CAA, for a one-year attainment date extension. Issuance of an extension is discretionary, but EPA can exercise that discretion only if the state has: (1) complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the ozone NAAQS at any monitoring site in the nonattainment area in the year preceding the extension year.

A complete discussion of the statutory provisions and EPA policies governing findings of whether an area failed to attain the ozone NAAQS and extensions of the attainment date can be found in the proposal for this action at 62 FR 46229 (September 2, 1997).

II. Proposed Action

On September 2, 1997, EPA proposed to find that the Phoenix ozone nonattainment area failed to attain the 1-hour ozone NAAQS by the applicable attainment date. 62 FR 46229. The proposed finding was based upon ambient air quality data from the years 1994, 1995, and 1996. These data showed that the 1-hour ozone NAAQS of 0.12 parts per million had been exceeded on average more than one day per year over this three-year period. Attainment of the 1-hour NAAQS is demonstrated when an area averages one or less days per year over the standard during a three-year period. 40 CFR 50.9 and Appendix H. EPA also proposed that the appropriate reclassification of the area was to serious, based on the area's 1994–1996 design value of 0.132 ppm. For a complete discussion of the Phoenix ozone data and method of calculating both the average number of days over the ozone standard and the design value, see 62 FR 46230.

EPA also proposed to deny the State of Arizona's application for a one-year extension of the moderate area ozone attainment date for the Phoenix nonattainment area. The proposed denial was based, in part, on evidence that the Phoenix area is not close to attainment of the 1-hour ozone standard and will need additional controls to attain, and, in part, on the area's failure to meet the second statutory criterion for granting an extension. That criterion requires that the area have no more than one exceedance of the ozone NAAQS in 1996. CAA section 181(a)(5)(B). The Fountain Hills special purpose monitor in the eastern part of the Phoenix nonattainment area recorded 4 exceedances of the 1-hour ozone NAAQS in 1996. For a complete discussion of the basis for the proposed denial of the extension, including EPA's policies related to the use of special purpose monitoring data, see 62 FR 46231.

Finally, EPA proposed to require submittal of the serious area SIP revisions no later than 12 months from the effective date of the area's reclassification.

III. Response to Comments

EPA received twenty-one comment letters in response to its September 2, 1997 proposal. Comments were received from Arizona Governor Jane Dee Hull, the Arizona legislative leadership, U.S. Senator Jon Kyl and U.S. Representative John Shadegg, the Arizona Department of Environmental Quality (ADEQ), the Maricopa County Environmental Services Department (MCESD), several local elected officials, numerous business groups, and one environmental group.

EPA wishes to express its appreciation to each of these individuals and organizations for taking the time to comment on the proposal. Each raised important issues to which EPA welcomes the opportunity to respond.

As described above, EPA's proposal was composed of three elements: (1) a finding of failure to attain by the statutory deadline of November 15, 1996; (2) a denial of the State's application for a one-year extension of the attainment date; and (3) a 12-month schedule for submittal of the revised SIP.

Most commenters emphasized Arizona's leadership in the development and implementation of effective ozone controls (many of which are only mandated for serious or severe ozone nonattainment areas) and its demonstrated commitment to making real improvements in air quality. Among the controls cited are: the State's premier vehicle emissions inspection program (which includes the only regulatory use of remote sensing), Maricopa County's Travel Reduction Program, the extension of the Federal Reformulated Gasoline (RFG) program to the Phoenix area, the State's adoption

[1] On July 18, 1997 (62 FR 38856), EPA revised the ozone NAAQS to establish a 8-hour standard; however, in order to ensure an effective transition to the new 8-hour standard, EPA also retained the 1-hour NAAQS for an area until such time as it determines that the area meets the 1-hour standard. See revised 40 CFR 50.9 at 62 FR 38894. As a result of retaining the 1-hour standard, CAA part D, subpart 2, *Additional Provisions for Ozone Nonattainment Areas*, including the reclassification provisions of section 181(b), remain applicable to areas that are not attaining the 1-hour standard. Unless otherwise indicated, all references in this notice are to the 1-hour ozone NAAQS.

of its own, more stringent ''Clean Burning Gasoline'' program as well as numerous other control programs such as the voluntary lawnmower replacement program, mandatory conversion of government fleets to alternative fuels, and incentives for conversion of private fleets to alternative fuels and for the construction of public fueling facilities. The City of Phoenix also listed a number of innovative air quality measures that it has implemented, and finally, APS noted the voluntary efforts of business and community groups including the Business for Clean Air Challenge program.

EPA is very aware of Arizona's leadership and noted the State's dedicated efforts to adopt and implement controls to attain the ozone standard in its proposal. See 62 FR 46232. The Agency would like to make clear that in taking this action it is neither ignoring Arizona's exemplary efforts to adopt controls to improve its air quality nor minimizing Arizona's commitment to clean air. Both are evidenced by the numerous controls listed above and the State's continuing efforts to evaluate its ozone situation.

As stated above, neither the determination of attainment/nonattainment nor the determination of whether an area met the statutory extension criterion relating to exceedances of the ozone NAAQS in 1996 allows for reviewing an area's efforts to adopt controls. This exercise involves little more than a rote review of available ambient air quality data. While EPA may desire more flexibility in this situation to reward Arizona for its demonstrated leadership, the Agency has not been granted that flexibility under the Clean Air Act.

For the most part, commenters made similar, and frequently identical, comments. The issues raised relate principally to (1) the adverse impacts of the reclassification to serious, (2) the retention of the 1-hour ozone NAAQS in EPA's recent action revising the ozone NAAQS, (3) the denial of the request for a one-year attainment date extension, (4) EPA's compliance with the Regulatory Flexibility Act, and (5) proposed measures to mitigate the impact of the reclassification. Many of the comments received did not directly address EPA's proposals and instead focused on issues that have been the subject of earlier EPA rulemakings (*e.g.*, retention of 1-hour ozone standard), outside of EPA's regulatory authority in this action (*e.g.*, the reclassification to serious), or unrelated to the action (*e.g.*, approval of Arizona's excess emissions rule).

In this preamble, EPA is responding to the most significant comments received and has provided more detailed and complete answers to all comments received in the Response to Comments (RTC) document which is part of the technical support document (TSD) for this rulemaking. Copies of the TSD as well as other documents in the docket for this rulemaking may be obtained from the contact listed at the beginning of this notice.

A. Comments Related to the Proposed Finding of Failure to Attain Comment

ADEQ and others note that Arizona has implemented most of the mandatory control programs for both serious and severe ozone nonattainment areas and the only remaining requirements are for more stringent new source review (NSR) and the federal clean fleets program. Because the imposition of these serious area requirements will do little to improve air quality in the Phoenix metropolitan area, the commenters contend that the reclassification is effectively punitive.

Response: Serious ozone nonattainment areas (like all other classifications) are subject to both specific requirements for mandatory control programs and more general requirements for attainment and reasonable further progress. EPA agrees that the Maricopa area already has in place most of the mandatory control programs required for serious area. The State, however, has yet to address the requirements for attainment by 1999 in CAA section 181(c)(2)(A) or the 9 percent rate-of-progress requirement in section 181(c)(2)(B). Both these requirements are very likely to require measures beyond the specific control programs mandated by a serious area classification, resulting in improved air quality for the Phoenix area.

The classification structure of the Act is a clear statement of Congress's belief that the later attainment deadlines afforded higher-classified and reclassified areas require compensating increases in the stringency of controls. The reclassification provisions of the Clean Air Act are a reasonable mechanism to assure continued progress toward attainment of the health-based ambient air quality standards when areas miss their attainment deadlines and are not punitive.

Comment: ADEQ, MCESD, and others asserted that the schedules for planning and attainment under a reclassification almost certainly guarantee failure because it would be difficult to complete the needed technical analysis within the proposed 12-month SIP submittal schedule and then to implement any additional controls needed before the 1999 ozone season.

Response: EPA agrees that the short time available for planning and attainment between the moderate area deadline of November 15, 1996 and the serious area deadline of November 15, 1999 makes completing the required technical analysis and adopting additional controls difficult. The State, however, has already adopted or is in the process of adopting a number of controls that will contribute substantial emission reductions in 1997 or beyond. These controls include the federal reformulated gasoline program for 1997, Arizona's Clean Burning Gasoline program for 1998 and later, improvements to the vehicle emission inspection program, and an industrial solvent cleaning rule (currently schedule for adoption in early 1998). In addition, ADEQ continues to evaluate and refine the Urban Airshed modeling performed for the draft Voluntary Early Ozone Plan (VEOP). All these actions give Arizona a head start in meeting the serious area requirements.

In proposing a 12-month schedule for submittal of the revised plan, EPA understood that this was an ambitious schedule but stated that it believed ''a 12-month schedule is appropriate because the attainment date for serious areas, November 15, 1999, is little more than 2 years away and the State will need to expedite adoption and implementation of controls to meet that deadline.'' See 62 FR 42633. EPA is therefore retaining the 12-month schedule for submittal of the SIP revisions needed to meet the serious area requirements.

Comment: Commenters argue that because stationary sources are not the cause of the ozone problem in Phoenix, the more stringent new source review (NSR) requirements that come with the serious area classification will do little to improve the air quality and are thus merely punitive.

Response: Phoenix is not being singled out for more stringent NSR requirements than any other similarly-classified area in the Country such as Atlanta, Washington, D.C. and San Diego. The more stringent NSR provisions (which principally affect which sources are subject to major source NSR) are required by statute of all serious areas without exception. This tightening of control requirements as areas move up the classification ladder and are given more time to attain is part of the basic Clean Air Act scheme for ozone attainment. In establishing this scheme, Congress determined that the more stringent NSR provision were reasonable for serious areas and, since

Congress did not provide relief from these requirements for reclassified areas, it also determined that they were reasonable without exception for moderate areas being reclassified to serious.

B. Comments Related to Retention of the 1-Hour Ozone Standard Comment

A number of comments were received on the legality of EPA's decision, having promulgated an 8-hour NAAQS, to defer revocation of the 1-hour ozone NAAQS.

Response: The continued applicability of the 1-hour standard until EPA determines that the applicable area is meeting that standard is not the subject of this rulemaking. This rulemaking only concerns the finding that the Phoenix area failed to attain the 1-hour standard and the denial of the State's request for an extension of the attainment deadline for that standard. The issue of the continued applicability of the 1-hour standard was part of the rulemaking in which EPA promulgated an 8-hour ozone standard. 62 FR 38856 (July 18, 1997). That rulemaking proceeding, not this one concerning Phoenix, was the appropriate forum in which to raise issues concerning the continued applicability of the 1-hour standard.

C. Comments Related to the Proposal to Deny Arizona's Application for a One-Year Extension of the Attainment Date

Almost all comments received opposed EPA's proposed denial of the State's application for a one-year extension of the November 15, 1996 attainment date. Before responding to the specific comments raised with regard to this issue, some introductory remarks are in order. In general, the commenters misperceive the nature of section 181(a)(5) of the CAA that provides:

> Upon application of any State, the Administrator *may* extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the [attainment deadline] if—
>
> (A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and
>
> (B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.
>
> No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area. Emphasis added.

Many commenters erroneously assume that if the conditions in subparagraphs A and B above are met, then EPA must automatically grant the extension. However, by its terms, section 181(a)(5) is ultimately discretionary. See 62 FR 46230. While EPA cannot grant an extension request if the conditions are not met, it is not required to do so even if they are.

While EPA believes, as discussed at length below, that the second condition has not been met, the Agency has ample justification for denying the request even if that were not the case. In its proposal, EPA articulated two reasons to deny the extension request. The first—the failure to meet the second extension criterion—will be discussed further below. The second—that the Phoenix area was not close to attainment—went virtually unaddressed by most the commenters. As EPA stated in its notice:

> [T]he underlying premise of an extension is that an area is close to attainment and already has in place the control strategy needed for attainment. All evidence in front of the Agency indicates that the Phoenix area is not close to attainment of the 1-hour ozone standard and that, despite the State's dedicated efforts to adopt and implement controls, the area will need to continue its on going planning and control efforts. Thus, even if the Phoenix area met the statutory requirements for granting an extension, *EPA believes that such an extension would not be appropriate at this time.* Emphasis added. 62 FR 46232.

While several commenters questioned EPA's conclusion that the Phoenix area was not close to attainment, their comments (which are addressed later) did not persuade EPA that its conclusion was wrong. In fact, an equal number of commenters tacitly agreed with EPA's position by arguing the need for long-term measures to solve Phoenix's ozone problem and the impossibility of showing attainment by 1999.

The central thrust of the comments EPA received on the extension issue is that EPA improperly included data from special purpose monitors (SPMs)[2] in its calculation of whether the Phoenix area experienced no more than one exceedance of the ozone NAAQS in 1996, the year preceding the extension year, and had EPA properly excluded the data, then the Phoenix area would have been granted an extension. For the reasons discussed below, EPA believes that it was entitled to rely on that data in making this assessment. However, even if the SPM data were excluded from the calculation, the Agency believes that it can properly exercise its discretion to deny the State's extension request.

As documented below and in Appendix B to the TSD, since at least 1989, Arizona has maintained an inadequate official monitoring network and has consistently declined to convert the SPMs (which meet all of EPA's technical criteria) to cure those deficiencies. If it had to rely solely on this inadequate monitoring network, it would be impossible for EPA to determine whether the Phoenix area had one or fewer exceedances of the ozone standard in 1996 because the official network does not adequately represent Phoenix's air quality. Only when the data from the SPMs are combined with those of the official network is it possible to make this determination and with the SPM data it is clear that the Phoenix area is not close to attaining the ozone 1-hour NAAQS. Modeling conducted by the State confirms this conclusion. Thus the underlying intent of the statute's extension provision has not been met. In acknowledging this reality, EPA can appropriately exercise its discretion to deny the extension request.

Comment: ADEQ contends that in a letter dated June 6, 1997, to the Clerk of the United States Court of Appeals for the Third Circuit, EPA's legal counsel noted that EPA was not required to consider non-network (i.e., not part of the SLAMS/NAMS network) data showing violations of the NAAQS. Letter, June 6, 1997, from Lois J. Schiffer, Assistant Attorney General, Environmental Natural Resources Division (by Greer S. Goldman), U.S. Department of Justice (DOJ) to P. Douglas Sisk, Clerk, United States Court of Appeals for the Third Circuit (''3rd Circuit letter''). ADEQ also cites *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 121 F.3d 106 (3rd Cir. 1997), to support its position that EPA in the past has excluded exceedance data from its evaluation of a redesignation request because the data came from monitors that were not part of the SLAMS network.

Response: In the 3rd Circuit letter, EPA actually concluded that the Agency's regulation on the use of SPM data, 40 CFR 58.14, does not authorize it to take into account the State's intended use of SPM data that otherwise meet that regulation's requirements when deciding whether to use it in an ozone redesignation action.[3] As a result, under EPA's regulation, all available SPM data that meet the minimum federal siting and quality assurance requirements in 40 CFR Part 58 must be used in making regulatory decisions

[2] In the Phoenix area, MCESD operates eight ozone monitors in its official or state or local air monitoring station/national air monitoring station (SLAMS/NAMS) network. ADEQ and MCESD operate a total of nine ozone special purpose monitors in the area.

[3] This letter was signed by DOJ on behalf of EPA and accurately reflects the Agency's position on the use of SPM data.

such as redesignations and reclassifications.

Southwestern Pennsylvania Growth Alliance involves EPA's disapproval of the Commonwealth of Pennsylvania's request to redesignate the Pittsburgh-Beaver Valley nonattainment area to attainment for ozone. The disapproval was based on 1995 violations of the ozone standard recorded on the area's SLAMS/NAMS network. 61 FR 19193 (May 1, 1996) The Southwestern Pennsylvania Growth Alliance (SWPGA), an organization of major manufacturers and local governments in the Pittsburgh-Beaver Valley region, sought review of EPA's disapproval by the Third Circuit Court of Appeals. A full history of EPA's actions on Pennsylvania's redesignation request can be found in the TSD for today's notice.

Among the issues raised by SWPGA was the use of the 1995 SLAMS/NAMS data. SWPGA argued that EPA acted contrary to the Act by considering the 1995 ozone exceedances because they occurred after the EPA's 18 month deadline to act on the State's redesignation request which had been submitted in November, 1993. In an effort to clarify certain statements made in its brief, EPA identified certain instances where it had not used available data when acting on a redesignation request. In one instance, the San Francisco-Bay Area redesignation to attainment for ozone, EPA had excluded SPM data from its redesignation evaluation. The other instance, LaFourche Parish, Louisiana, involved only SLAMS/NAMS data. 121 F.3d at 115.

The court then directed EPA to address a number of questions, including why it is lawful for EPA to exclude consideration of data from monitors that are not part of the SLAMS network. The 3rd Circuit letter cited by ADEQ is EPA's response to the court on this issue. As stated in this letter (p. 4):

> For data from monitors that are not part of the SLAMS network required by [40 CFR] Part 58 [EPA's monitoring regulation], EPA regulations provide that EPA will exclude the data when they do not meet the terms of 40 CFR 58.14. That section provides, in relevant part:
>
> Any ambient air quality monitoring station other than a SLAMS or [prevention of significant deterioration] station from which the State intends to use the data as part of a demonstration of attainment or nonattainment or in computing a design value for control purposes of the [NAAQS] must meet the requirements for SLAMS described in section 58.22 and, after January 1, 1983, must also meet the requirements for SLAMS as described in section 58.13 and appendices A and E to this part.
>
> * * * In at least one case, EPA has interpreted section 58.14 to make a state's intent a factor in determining whether data from special purpose monitors that otherwise meet the requirements of section 58.14 may be excluded from consideration in an ozone redesignation action. However, EPA has recently evaluated that interpretation and concluded that it is not authorized by section 58.14.

The passage supports the conclusion that the only circumstance under which SPM data may be excluded is if the data do not meet the siting and quality assurance requirements of Part 58.

The statement that ADEQ cites from the 3rd Circuit letter comes from the letter's concluding paragraph which discusses the specific facts of *Southwestern Pennsylvania Growth Alliance.* All monitoring data under consideration in that case came from SLAMs monitors; there were no SPM data at issue in EPA's decision to deny the redesignation request. In this context, it is clear that the 3rd Circuit letter does not indicate that EPA may ignore SPM data:

> It should be noted, however, that the issue of whether EPA has discretion to decide if data from outside the official monitoring network should be used in redesignation decisions is not at issue in this case, where all monitored violations of the ozone standard were recorded at official network monitors. And even if EPA were required to consider non-network data showing violations, EPA would not be authorized to ignore violations at official network monitors when determining whether an area has attained the standard and is entitled to redesignation. 3rd Circuit letter (p. 4).

ADEQ also cites the court's opinion to support its contention that EPA has excluded SPM data in the past. While the court noted that ''[i]n at least one case, the EPA has excluded exceedance data from its evaluation of a redesignation request because the data came from monitors that were not part of the [SLAMS] network * * *,'' it went on to state in the same paragraph:

> Assuming arguendo that the EPA's exclusion of non-SLAMS exceedance data violates the EPA's duty not to redesignate an area that fails to attain the NAAQS, *the EPA's prior disregard of this duty did not relieve the EPA of its obligation to act correctly in other cases.* Emphasis added. 121 F.3d at 115.

Based on its interpretation of Section 58.14, and the facts of the Phoenix air quality situation discussed below, EPA believes that it is acting correctly in not excluding the SPM data from consideration in the Phoenix extension decision.

Comment: Numerous commenters questioned the timing of EPA's issuance of the *Memorandum,* ''Agency Policy on the Use of Special Purpose Monitoring Data,'' dated August 22, 1997, by John Seitz, EPA Director of the Office of Air Quality Planning and Standards (''SPM policy'' or ''SPM memo''), noting that it was issued just 3 days in advance of EPA's announcement that it was proposing to find that the Phoenix area had failed to attain the ozone standard and to deny the State's extension request. The commenters contend that, absent this ''ad hoc policy,'' EPA would not have been able to propose to deny Arizona's one-year extension request based upon the use of the special purpose monitor data that EPA has heretofore rejected.

Commenters state that the information submitted to EPA's AIRS and additional data submitted to EPA by ADEQ demonstrate that, had the Fountain Hills special purpose monitor data properly been excluded, the criterion in section 181(a)(5)(B) would have been satisfied. Commenters note that during the year preceding the extension year (1996), there was only one exceedance of the ozone NAAQS at a SLAMS or NAMS monitor (the exceedance at the Mesa SLAMS monitor on July 23, 1996, when a reading of 0.127 ppm ozone was recorded) and that this was the only ozone exceedance recorded during the entire calendar year of 1996 on any official SLAMS or NAMS monitor.

Response: The proper treatment of SPM data has been growing national interest for some time, increasing the need for EPA to issue national guidance. As noted in the SPM memo (p. 1):

> [OAQPS] has received several inquiries from Regional Offices into how special purpose monitoring data can be used in making a variety of regulatory decisions such as designations, classifications, and attainment date extensions. [It] also [has] a final ruling from the U.S. Court of Appeals for the Third Circuit which supports the U.S. EPA denial of Pennsylvania's redesignation request for the Pittsburgh-Beaver Valley ozone nonattainment area. In light of these questions, legal developments, and the new [NAAQS] implementation directives, [OAQPS] believe[s] it is necessary to discuss the use of all publicly available special purpose monitoring data for all regulatory applications.

Further impetus for the SPM policy was the revised ozone NAAQS under which EPA must determine within 90 days of their July 18, 1997 publication which areas of the Country are attaining the 1-hour standard. National guidance is clearly essential to assure consistency in the use of SPM data for these determinations.

The interest in and the need for a clear statement of the Agency's policy on SPM data was thus far broader than the Phoenix situation. The Agency did not, as the commenters imply, create an

''ad hoc'' policy simply to justify its proposed denial of Arizona's request for an extension but rather it articulated a national policy applicable to all areas of the Country.

The commenters, however, wrongly assert that EPA needed the August 22, 1997 SPM policy to justify its denial of Arizona's extension request. Even without a formal written policy statement, EPA believes that it has sound reasons to use the SPM data in this case, including the inadequate SLAMS/NAMS network in Phoenix, the discrepancies in measured air quality between the official monitors and the SPMs, and its long-established regulations governing the use of SPM data.

Moreover, the June 6, 1997 letter to the Third Circuit and the Court's subsequent July 28, 1997 decision *in Southwestern Pennsylvania Growth Alliance,* both available long before EPA's announcement, may be read to imply that EPA must consider available SPM data in making regulatory decisions such as granting extension requests. As noted in the SPM memo (p. 2):

> The Third Circuit Court decision supports the view that the EPA may not redesignate an area from nonattainment to attainment if the EPA knows that the area is not meeting the ozone NAAQS. Specifically, if the U.S. EPA knows of a violation or violations of the ozone NAAQS by either examining information within the AIRS or data from other sources and these data meet all 40 CFR Part 58 requirements, the U.S. EPA cannot determine that an area is attaining the NAAQS.

This logic applies equally to extension requests: if EPA knows of more than one exceedance in an area in the year preceding the extension year by either examining information within AIRS or data from other sources and these data meet all 40 CFR part 58 requirements, EPA cannot grant an extension of the attainment date.

Finally, EPA notes that it informed Arizona of its intention to use the SPM data in advance of its August 25, 1997 announcement. In a presentation to the May 19, 1997 meeting of the Arizona air quality monitoring network stakeholders,[4] EPA stated that the current Maricopa SLAM network was deficient and that it could not, without inclusion of the SPM sites, support the granting of an extension. At the June 9, 1997 meeting, EPA distributed the 3rd Circuit letter and noted that EPA would soon be formally clarifying its use of SPM data. EPA also made a series of courtesy calls to state and local agencies the week before its announcement to inform them that it would be proposing to find that Phoenix had failed to attain and that it was proposing to deny the extension request based in part on the SPM data.

Comment: Several commenters contend that the use of the SPM data in this instance is inconsistent with actions taken in other nonattainment areas where SPM data were excluded for the purposes of making similar determinations and conclude that if EPA had followed its earlier precedents then data from the Fountain Hills special purpose monitor would not have been used to deny the extension request. ADEQ also notes that the SPM memo implicitly concedes that Agency policy up to the date of the memorandum had been to reject exactly the kind of monitoring data on which EPA based its decisions to propose to deny the one-year extension. Commenters view EPA's refusal to follow prior precedent and disregard special purpose monitor data in this situation as a simple case of disparate treatment.

Response: EPA's previous record on the use of SPM data contains numerous examples of instances where the Agency has used SPM data in making designation and classification decisions. While commenters note one instance where EPA did not use available SPM data (the Beaumont-Port Arthur reclassification), and the SPM memo notes one other (the San Francisco-Bay Area redesignation), there are many more instances where the Agency has used SPM data to either designate or classify an area, including the original classification of the Phoenix area as moderate for ozone and the PM–10 nonattainment designations for the Bullhead City and Payson, Arizona areas. See 56 FR 56694, 56703 (November 6, 1991) and 58 FR 67334, 67336 (December 21, 1993), respectively. Outside of Arizona, EPA has used SPM data to redesignate to nonattainment portions of White Top Mountain in New York and Smyth County, Virginia. See 56 FR 56694, 56704.

Many commenters cited EPA's 1996 action to correct the Beaumont/Port Arthur, Texas area ozone classification from serious to moderate as an example of EPA's inconsistent use of SPM data. 61 FR 14496 (April 2, 1996). In this case, data from an SPM had originally been utilized to classify the Beaumont/Port Arthur area as a serious ozone nonattainment area. Based on additional information provided by Texas, EPA corrected the reclassification under CAA section 110(k)(6) from serious to moderate, stating that the data from the SPM should not have been used for classification purposes because, among other reasons, the SPM was not a part of the state monitoring network, the data from the monitor were utilized for research purposes, and the data were not reported to EPA's Aerometric Information Retrieval System (AIRS).

Commenters contend that in these three circumstances the Phoenix situation closely parallels Beaumont-Port Arthur's; therefore, EPA should treat the Phoenix SPM data in a like manner by excluding it. In response, EPA notes that it has clarified its policy on the treatment of SPM data since the April 2, 1996 action on Beaumont-Port Arthur, resulting in all three of these circumstances no longer being grounds for excluding SPM data.[5]

Even if EPA's regulations and policy were that valid SPM data could be excluded in some cases (which they are not), EPA believes that there are two compelling reasons to use the SPM data in the Phoenix case. These reasons are (1) the inadequacy of the Maricopa ozone monitoring network and (2) the large discrepancy between air quality when measured on Maricopa's SLAMS/NAMS network and when measured on the SLAMS/NAMS/SPM network.

Since 1989, EPA has consistently found that Maricopa's existing ozone SLAMS/NAMS network is inadequate to meet the monitoring objectives of Part 58, more specifically the requirement for a site measuring maximum concentration. A complete history of EPA's evaluations of the Maricopa County monitoring network can be found in Appendix D to the TSD. Numerous evaluations, including the recent VEOP, have indicated that maximum ozone concentrations are occurring in the rapidly-developing eastern-northeastern portion of

[4] ADEQ convened a series of facilitated stakeholder meetings in May through July, 1997 to discuss the ambient air quality monitoring network in Maricopa County. Participants included MCESD, other local agencies, industry representatives, and environmental groups. EPA also participated in the meetings.

[5] This policy clarification is clearly permissible. Moreover, even if it were a change or revision in policy, rather than a clarification, it would also clearly be permissible. It is well established that an agency may modify or reverse its interpretation over time provided the agency supplies a reasoned basis for the change. See *e.g., Chevron U.S.A., Inc.* v. *NRDC,* 467 U.S. 837, 863 (1984); *Motor Vehicle Manufacturers Assoc. of the U.S., Inc.* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 42 (1983)(''we fully recognize that ''[regulatory] agencies do not establish rules of conduct to last forever' * * * and that an agency must be given ample latitude to ''adapt their rules and policies to the demands of changing circumstances.' ''); *Good Samaritan Hospital* v. *Shalala,* 113 S. Ct. 2151, 2161 (1993) (''[A]n administrative agency is not disqualified from changing its mind * * *''). EPA provided that reasonable basis in the SPM memo.

Maricopa County.[6] While there are SLAMS sites located throughout the central part of the Phoenix metropolitan area, there are no SLAMS sites on the eastern edge of the Phoenix area. EPA has been urging the County for nearly a decade to locate an ozone SLAMS monitor in this area. The County has responded by locating numerous SPM sites there (including the Fountain Hills SPM site) but has yet to convert any of those sites into SLAMS or NAMS.

Based solely on this inadequate network, it is not possible for EPA to accurately determine the area's compliance with the second statutory criterion for extensions. Such a determination can only be made based on data from a complete network that accurately reflects air quality in the area; therefore, even if the SPM data were excluded from the calculation, the Agency believes that it can properly exercise its discretion to deny the State's extension request.

The inadequate SLAMS network has led to a troubling discrepancy between the air quality measured on the SLAMS/NAMS network and that network when augmented by the SPM sites. This is illustrated by Table 1 below.

TABLE 1.—AIR QUALITY COMPARISON BETWEEN THE SLAMS/NAMS NETWORK AND SLAMS/NAMS/SPM NETWORK

[Maricopa County, 1994–1996]

	SLAMS/NAMS network	SLAMS/NAMS/SPM network (w/o Mt. Ord or Blue Point)
Number of Ozone Exceedance	10	44
Number of Ozone Violations	2	13
Number of Days over the Ozone Standard	6	21

Clearly had EPA ignored the SPM data in Maricopa County, it would have greatly underestimated the severity of the area's air quality and inappropriately downplayed the impact of that air quality on public health.

Given the significant probability that the Phoenix area would eventually face reclassification to serious even if it were granted an extension, EPA questions the actual benefit of an extension to the area. The commenters have made extensive comments on the adverse impacts of reclassification, among them the short-term planning and attainment deadlines facing newly serious areas and the imposition of the more stringent NSR provisions. An extension would only compound the problem of the short time frames while simply deferring the more stringent NSR provisions for a short time. Hence, even if it were within its discretion to grant an extension, EPA stands by its belief that an extension is not appropriate at this time.

Comment: A number of commenters noted that the Phoenix area had not experienced any ozone exceedances in 1997 and asserted that this indicates that the area's ozone problem has been solved. Noting that the number of ozone exceedances peaked in 1995 and decreased in 1996, the County stated that the ''reality check'' provided by the ambient data indicates a trend contradictory to EPA's contention that the Phoenix area is not close to attainment.

Response: The clean ozone air quality that the Phoenix area has experienced this year is very good news. These lower ozone readings are due in some part to the introduction of reformulated gasoline and the continuing implementation of other control programs such as the State's premier vehicle emission inspection program.

Unfortunately, a single year of ozone data cannot be used to conclude that an area is close to attaining the 1-hour ozone standard. The Phoenix area has experienced another year (1989) in which ozone exceedances were not recorded, only to have the subsequent years show widespread violations.

Ozone levels are related to both emission levels and meteorology. As a result of this meteorological component, ozone levels can vary greatly from year to year. The 1-hour ozone standard accounts for the weather's effect by evaluating compliance over a three-year period (that is, an area can average no more than 1 exceedance per year over a three-year period). 40 CFR 50.9 and part 50, Appendix H.

There is some reason to believe that favorable weather patterns this year have also contributed to Phoenix's low ozone readings. In fact, 1997 has been an unusually good year for air quality throughout the West. All areas in EPA Region 9 (with the exception of San Diego and the Imperial Valley) have shown decreases in second-high ozone levels from 1996 to 1997, many greater than Phoenix's. None of these areas has introduced substantial new emission reduction programs, like Phoenix, that would account for these decreases.

D. Comments Related to the Regulatory Flexibility Act Requirements

Comment: A number of commenters claimed that EPA failed to comply with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) in its proposal.[7] The commenters claim that EPA's certification that its action would not have a significant economic impact on a substantial number of small entities is incorrect.

In support of their argument, the commenters state that small businesses that emit 50 tpy or more of VOC will become subject to reasonably available control technology (RACT) requirements, more stringent NSR requirements, and the Title V operating permit program as a result of the reclassification to serious and describe in more detail the potential adverse impacts of these requirements on small businesses.[8]

The commenters further assert that EPA's reliance on *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) for not preparing a regulatory flexibility analysis is misplaced. Finally, as an aside, the commenters note that *Mid-Tex* was decided a decade before Congress enacted SBREFA and more significantly,

[6] This is borne out by the fact that all but one of the 1996 exceedances (the one at the Mesa SLAMS monitor) occurred at monitors to the east or northeast of the metropolitan area.

[7] SBREFA amended the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*

[8] EPA notes that businesses that emit 100 tpy or more are already subject to some of these requirements under the moderate area classification.

SBREFA imposes outreach requirements on EPA and OSHA which are imposed on no other government agencies (citing 5 U.S.C. 609(b) and (d)).

Response: The Regulatory Flexibility Act provides that, whenever an agency is required to publish a general notice of rulemaking for a proposed rule, the agency must prepare an initial regulatory flexibility analysis for the proposed rule unless the head of the agency certifies that the rule ''will not, if promulgated, have a significant economic impact on a substantial number of small entities'' (section 605(b)). EPA certified the proposed determination that the Phoenix area did not attain the 1-hour ozone standard by the attainment date and the proposed denial of the attainment date extension request,[9] based on its conclusion that the rule would not establish requirements applicable to small entities and therefore would not have a significant economic impact on small entities within the meaning of the RFA. EPA is reaffirming that certification in this final action.

As described elsewhere in this notice, CAA section 181(b) requires EPA to determine whether an area has attained a NAAQS by the applicable attainment deadline. If EPA finds that the area has not attained, the section generally provides that the area ''shall be reclassified by operation of law'' (section 181(b)(2)(A)). The section requires EPA to publish a notice in the **Federal Register** identifying each area the Agency has determined to be in nonattainment and ''identifying'' the resulting reclassification of the area (section 181(b)(2)(B)).

While determinations that trigger a reclassification do not themselves establish regulatory requirements applicable to small (or large) entities, they may, as noted by the commenters, trigger the application to small entities of regulatory requirements established by other rulemakings under the Clean Air Act (and conceivably other statutes). EPA, however, has concluded that the word ''impact'' as used in the RFA does *not* include regulatory requirements that the rule does not establish, but may trigger under the terms of other rules or statutory provisions. For the reasons discussed at length in the TSD, EPA believes that the RFA's text, legislative history and case law, including *Mid-Tex,* all make clear that RFA analysis is limited to the requirements of the rule being promulgated.

A more detailed discussion of this issue may be found in the TSD for this rulemaking.

E. Comments Related to Mitigating the Adverse Impacts of Reclassification

Many commenters suggested several steps that could be taken to mitigate the adverse impacts of the reclassification to serious. While EPA will briefly respond to most of the suggestions here, many involve issues that are being dealt with in forums other than this action. EPA will continue to work with interested parties in Arizona to address these issues in those other forums. EPA also received questions regarding the implementation of NSR and Title V requirements. Those questions are addressed in the TSD.

Comment: Commenters requested that EPA suspend further enforcement of the 1-hour ozone NAAQS in the Phoenix Metropolitan area by amending its ''implementation policy'' for the revised 8-hour ozone NAAQS. Commenters contend that EPA has the flexibility and authority to do so under the ''implementation policy'' by citing the policy's statements that implementation of the new 8-hour ozone NAAQS should be ''carried out to maximize common sense, flexibility, and cost effectiveness.'' 62 FR 38421 (July 18, 1997).

Response: The document referred to and cited by the commenters as the ''Implementation Policy,'' 62 FR 38421 (July 18, 1997) is a memorandum to the EPA Administrator entitled ''Implementation of Revised Air Quality Standards for Ozone and Particulate Matter'' (''President's Memorandum'') signed by President Clinton for the implementation of the revised ozone and particulate matter standards. Attached to that memorandum is a strategy, ''Implementation Plan for Revised Air Quality Standards'' (''Implementation Plan'') outlining the steps for implementing these standards. EPA is currently developing guidance and proposed rules consistent with the President's Memorandum. EPA is committed to the goals of maximizing common sense, flexibility, and cost effectiveness in implementing the revised NAAQS.

EPA's action reclassifying Phoenix as a serious ozone nonattainment area is in no way inconsistent with those goals. Furthermore, it is consistent with the continued applicability of the 1-hour standard and subpart 2 as provided for in EPA's rulemaking on the ozone NAAQS. See 62 FR 38856, 38873. To the extent that the comments concern that issue, they are not appropriately raised in this rulemaking.

Neither the provisions of 40 CFR 50.9, as revised (62 FR 38856, 38894), nor any other statutory or regulatory provisions, provide EPA with the authority to suspend enforcement of the 1-hour NAAQS in Phoenix. Moreover, as noted earlier, the Phoenix area has not complied with some of the most significant serious area requirements (e.g., the 9 percent rate of progress requirement). Finally EPA believes that complying with those requirements will have a positive, not detrimental, effect on the ability of Phoenix to comply with the 8-hour standard. Additional comments related to this point are addressed in the TSD.

Comment: The commenters requested that EPA execute an agreement with the State of Arizona to act upon submitted SIP revisions within a fixed period of time based upon priorities identified by the State and to set a schedule for acting on future SIP revisions.

Response: EPA Region 9 receives hundreds of requests each year to revise federally-enforceable SIPs from over 40 different state and local air pollution agencies. These include requests to modify inventories, attainment demonstrations, and administrative, permit, and prohibitory regulations. Given the available resources, Region 9 is unable to review and act on each of these requests as quickly as it would like. As a result, the Agency relies on the state and local agencies to prioritize submittals so that the most important ones to the state and local agencies can be acted on first. Region 9 does expect to take final action soon on several revisions submitted by Maricopa County and has recently contacted the Arizona air pollution agencies to request that they identify those submittals that need to be acted quickly in order to issue Title V permits or for other purposes. Region 9 will process submittals in the priority order requested by these agencies.

Comment: Commenters requested that EPA approve EPA Arizona Administrative Code (A.A.C.) R18–2–310 (The Arizona Excess Emissions Rule) as a revision to the SIP.

Response: This comment is closely related to a lawsuit brought by the Arizona Mining Association with regard to EPA's interim approval of Arizona's Title V operating permit program on October 30, 1996 (61 FR 55910). The parties involved in the suit have had constructive exchanges, which EPA expects to continue, on the appropriate treatment of the Arizona Excess Emissions Rule during the settlement discussions.

[9] Commenters only addressed the potential impact on small businesses of the reclassification (which is based on the determination of nonattainment and the denial of the extension request), and not the potential impacts of the SIP submittal schedule. Therefore, the latter action is not discussed further in response to this comment.

Comment: Commenters request that EPA adopt realistic, streamlined national Prevention of Significant Deterioration (PSD) and New Source Review (NSR) regulations.

Response: EPA recognizes that its current regulations governing the new source review programs mandated by both parts C (PSD) and D (NSR) of Title I of the Clean Air Act are a source of concern for many people. On July 23, 1996, EPA proposed major revisions (known as the NSR reform proposal) to its PSD and NSR regulations. 61 FR 38250. EPA has received many comments on its proposal and is currently carefully reviewing and considering these comments as it develops the final rule. EPA's goal for this final rule is to simplify its NSR and PSD regulations consistent with the Clean Air Act requirements for those programs.

Comment: Commenters request that EPA adopt a regulatory affirmative defense for sources with potential VOC emissions of from 50 to 100 tons per year that will apply to enforcement of the NSR requirements in ozone nonattainment areas that meet certain criteria.

Response: It appears that the commenters are attempting to ease the perceived regulatory burden that will be imposed on sources that emit between 50 and 100 tons of VOC per year as a result of the reclassification. EPA will study the proposal, but its initial response is that the commenters' suggested approach is not the most effective means for addressing their underlying concerns. EPA believes it may be constructive to engage in a dialogue regarding possible mechanisms for limiting sources' potential to emit to below the thresholds that trigger NSR. However, where a source's actual emissions exceed the major source threshold or the source is unable to reduce its potential to emit below the major source threshold, the source is subject to major NSR.

Comment: Commenters request that EPA continue to expeditiously act to approve the Arizona Clean Burning Gasoline Program.

Response: EPA has been very pleased to support Arizona's efforts to bring reformulated gasoline to the Phoenix area. In addition to approving the Governor's request to join the federal program and the State's request for lower RVP limits, the Agency participated in the development of the new CBG rules in order to correct any approval problems early in the process. EPA is now working closely with ADEQ to act on the recent submittal of the CBG rules. This work is among EPA's highest priorities.

F. Other Comments

Comment: Senator Kyl and Representative Shadegg commented that by using data collected from 1994 through 1996 as the basis for its decision, EPA has not taken into account the significant and positive effects of the RFG program and other actions taken by the State of Arizona to reduce ozone pollution and that this results in an inaccurate and unwarranted reclassification of Phoenix to serious. They comment further that this violates principles in President's July 18, 1997 memorandum that ''implementation of the air quality standards is to be carried out to maximize common sense, flexibility, and cost effectiveness.''

Response: EPA agrees that the 1994–1996 data do not reflect the 1997 implementation of the RFG program and that this program will have a continuing positive effect on ozone levels in the Phoenix area. EPA, however, is constrained by statute from considering 1997 data in its finding of failure to attain and denial of the extension request.

CAA section 181(b)(4) requires EPA to determine if an area has attained ''as of the attainment date.'' For Phoenix, the attainment date is November 15, 1996, and under long-established procedures, determining attainment as of that date requires reviewing data from the three years immediately preceding that date or 1994 through 1996. 40 CFR 50.9 and part 50, Appendix H.

The criterion for extensions in CAA section 181(a)(5)(B) is that ''no more than one exceedance of the [ozone standard] has occurred in the area in the year preceding the Extension Year.'' The extension year is 1997, thus the ''year preceding'' is 1996.

VI. Final Action

EPA is finding that the Phoenix ozone nonattainment area did not attain the ozone NAAQS by November 15, 1996, the CAA attainment date for moderate ozone nonattainment areas. EPA is also denying Arizona's application for a one-year extension of the attainment date. As a result of this finding and denial, the Phoenix ozone nonattainment area is reclassified by operation of law as a serious ozone nonattainment area on the effective date of today's action and the submittal of the serious area SIP revisions will be due no later than 12 months from this effective date. The requirements for this SIP submittal are established in CAA section 182(c) and applicable EPA guidance.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future action. Each finding of failure to attain, request for an extension of an attainment date, and establishment of a SIP submittal date shall be considered separately and shall be based on the factual situation of the area under consideration and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today's action is a ''significant regulatory action'' within the meaning of the E.O., and therefore should be subject to OMB review, economic analysis, and the requirements of the E.O. *See* E.O. 12866, sec. 6(a)(3). The E.O. defines, in sec. 3(f), a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may meet at least one of four criteria identified in section 3(f), including,

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

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

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

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

EPA has determined that neither the finding of failure to attain it is making today, the denial of Arizona's request for a one-year extension of the attainment data, nor the establishment of SIP submittal schedule would result in any of the effects identified in E.O. 12866 sec. 3(f). As discussed in the response to comments above and in more detail in the TSD, findings of failure to attain under section 181(b)(2) of the Act are based upon air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. These findings do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because

those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. The same is true of the determination not to grant a one-year extension, in light of the fact that this determination is also based in part on air quality values. Similarly, the establishment of new SIP submittal schedules merely establishes the dates by which SIPs must be submitted, and does not adversely affect entities.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As discussed in the response to comments above and in more detail in the TSD, a finding of failure to attain (and the consequent reclassification by operation of law of the nonattainment area) under section 181(b)(2) of the Act, a denial of a one-year extension request, and the establishment of a SIP submittal schedule for a reclassified area, do not, in-and-of-themselves, directly impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply makes a factual determination and establishes a schedule to require States to submit SIP revisions, and does not directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA reaffirms its certification made in the proposal (62 FR 46233) that today's final action will not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates ''any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more'' in any one year. A ''Federal mandate'' is defined, under section 101 of UMRA, as a provision that ''would impose an enforceable duty'' upon the private sector or State, local, or tribal governments'', with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA ''establish[es] any regulatory requirements that might significantly or uniquely affect small governments''. Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's ''regulatory proposals'' that contain significant Federal intergovernmental mandates. Under section 205 of UMRA, before EPA promulgates ''any rule for which a written statement is required under [UMRA sec.] 202'', EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

Generally, EPA has determined that the provisions of sections 202 and 205 of UMRA do not apply to this decision. Under section 202, EPA is to prepare a written statement that is to contain assessments and estimates of the costs and benefits of a rule containing a Federal Mandate ''unless otherwise prohibited by law.'' Congress clarified that ''unless otherwise prohibited by law'' referred to whether an agency was prohibited from considering the information in the rulemaking process, not to whether an agency was prohibited from collecting the information. The Conference Report on UMRA states, ''This section [202] does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule.'' 141 Cong. Rec. H3063 (Daily ed. March 13, 1995). Because the Clean Air Act prohibits, when determining whether an area attained the ozone standard or met the criteria for an extension, from considering the types of estimates and assessments described in section 202, UMRA does not require EPA to prepare a written statement under section 202. Although the establishment of a SIP submission schedule may impose a federal mandate, this mandate would not create costs of $100 million or more, and therefore, no analysis is required under section 202. The requirements in section 205 do not apply because those requirements for rules ''for which a written statement is required under section 202 * * *.''

With regard to the outreach described in UMRA section 204, EPA discussed its proposed action in advance of the proposal with State officials.

Finally, section 203 of UMRA does not apply to today's action because the regulatory requirements finalized today—the SIP submittal schedule—affect only the State of Arizona, which is not a small government under UMRA.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 5, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: October 27, 1997.

Harry Seraydarian,

Acting Regional Administrator.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.303 is amended by revising the table for Arizona— Ozone, for the Phoenix Area to read as follows:

§ 81.303 Arizona

* * * * *

ARIZONA-OZONE

Designated area	Designation		Classification	
	Date	Type	Date	Type
Phoenix Area:				
Maricopa County (part)	11/15/90	Nonattainment	12/8/97	Serious.
The Urban Planning Area of the Maricopa Association of Governments is bounded as follows:				
1.Commencing at a point which is at the intersection of the eastern line of Range 7 East, Gila and Salt River Baseline and Meridian, and the southern line of Township 2 South, said point is the southeastern corner of the Maricopa Association of Governments Urban Planning Area, which is the point of beginning;				
2. Thence, proceed northerly along the eastern line of Range 7 East which is the common boundary between Maricopa and Pinal Counties, as described in Arizona Revised Statute Section 11–109, to a point where the eastern line of Range 7 East intersects the northern line of Township 1 North, said point is also the intersection of the Maricopa County Line and the Tonto National Forest Boundary, as established by Executive Order 869 dated July 1, 1908, as amended and showed on the U.S. Forest Service 1969 Planimetric Maps;				
3. Thence, westerly along the northern line of Township 1 North to approximately the southwest corner of the southeast quarter of Section 35, Township 2 North, Range 7 East, said point being the boundary of the Tonto National Forest and Usery Mountain Semi-Regional Park;				
4. Thence, northerly along the Tonto National Forest Boundary, which is generally the western line of the east half of Sections 26 and 35 of Township 2 North, Range 7 East, to a point which is where the quarter section line intersects with the northern line of Section 26, Township 2 North, Range 7 East, said point also being the northeast corner of the Usery Mountain Semi-Regional Park;				
5. Thence, westerly along the Tonto National Forest Boundary, which is generally the south line of Section 19, 20, 21 and 22 and the southern line of the west half of Section 23, Township 2 North, Range 7 East, to a point which is the southwest corner of Section 19, Township 2 North, Range 7 East;				
6. Thence, northerly along the Tonto National Forest Boundary to a point where the Tonto National Forest Boundary intersects with the eastern boundary of the Salt River Indian Reservation, generally described as the center line of the Salt River Channel;				
7. Thence, northeasterly and northerly along the common boundary of the Tonto National Forest and the Salt River Indian Reservation to a point which is the northeast corner of the Salt River Indian Reservation and the southeast corner of the Fort McDowell Indian Reservation, as shown on the plat dated July 22, 1902, and recorded with the U.S. Government on June 15, 1902;				

ARIZONA-OZONE—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
8. Thence, northeasterly along the common boundary between the Tonto National Forest and the Fort McDowell Indian Reservation to a point which is the northeast corner of the Fort McDowell Indian Reservation;				
9. Thence, southwesterly along the northern boundary of the Fort McDowell Indian Reservation, which line is a common boundary with the Tonto National Forest, to a point where the boundary intersects with the eastern line of Section 12, Township 4 North, Range 6 East;				
10. Thence, northerly along the eastern line of Range 6 East to a point where the eastern line of Range 6 East intersects with the southern line of Township 5 North, said line is the boundary between the Tonto National Forest and the east boundary of McDowell Mountain Regional Park;				
11. Thence, westerly along the southern line of Township 5 North to a point where the southern line intersects with the eastern line of Range 5 East which line is the boundary of Tonto National Forest and the north boundary of McDowell Mountain Regional Park;				
12. Thence, northerly along the eastern line of Range 5 East to a point where the eastern line of Range 5 East intersects with the northern line of Township 5 North, which line is the boundary of the Tonto National Forest;				
13. Thence, westerly along the northern line of Township 5 North to a point where the northern line of Township 5 North intersects with the easterly line of Range 4 East, said line is the boundary of Tonto National Forest;				
14. Thence, northerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects with the northern line of Township 6 North, which line is the boundary of the Tonto National Forest;				
15. Thence, westerly along the northern line of Township 6 North to a point of intersection with the Maricopa-Yavapai County line, which is generally described in Arizona Revised Statute Section 11–109 as the center line of the Aqua Fria River (Also the north end of Lake Pleasant);				
16. Thence, southwesterly and southerly along the Maricopa-Yavapai County line to a point which is described by Arizona Revised Statute Section 11–109 as being on the center line of the Aqua Fria River, two miles southerly and below the mouth of Humbug Creek;				
17. Thence, southerly along the center line of Aqua Fria River to the intersection of the center line of the Aqua Fria River and the center line of Beardsley Canal, said point is generally in the northeast quarter of Section 17, Township 5 North, Range 1 East, as shown on the U.S. Geological Survey's Baldy Mountain, Arizona Quadrangle Map, 7.5 Minute series (Topographic), dated 1964;				
18. Thence, southwesterly and southerly along the center line of Beardsley Canal to a point which is the center line of Beardsley Canal where it intersects with the center line of Indian School Road;				

ARIZONA-OZONE—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
19. Thence, westerly along the center line of West Indian School Road to a point where the center line of West Indian School Road intersects with the center line of North Jackrabbit Trail; 20. Thence, southerly along the center line of Jackrabbit Trail approximately nine and three-quarter miles to a point where the center line of Jackrabbit Trail intersects with the Gila River, said point is generally on the north-south quarter section line of Section 8, Township 1 South, Range 2 West; 21. Thence, northeasterly and easterly up the Gila River to a point where the Gila River intersects with the northern extension of the western boundary of Estrella Mountain Regional Park, which point is generally the quarter corner of the northern line of Section 31, Township 1 North, Range 1 West; 22. Thence, southerly along the extension of the western boundary and along the western boundary of Estrella Mountain Regional Park to a point where the southern extension of the western boundary of Estrella Mountain Regional Park intersects with the southern line of Township 1 South; 23. Thence, easterly along the southern line of Township 1 South to a point where the south line of Township 1 South intersects with the western line of Range 1 East, which line is generally the southern boundary of Estrella Mountain Regional Park; 24. Thence, southerly along the western line of Range 1 East to the southwest corner of Section 18, Township 2 South, Range 1 East, said line is the western boundary of the Gila River Indian Reservation; 25. Thence, easterly along the southern boundary of the Gila River Indian Reservation which is the southern line of Sections 13, 14, 15, 16, 17, and 18, Township 2 South, Range 1 East, to the boundary between Maricopa and Pinal Counties as described in Arizona Revised Statues Section 11–109 and 11–113, which is the eastern line of Range 1 East; 26. Thence, northerly along the eastern boundary of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, to a point where the eastern line of Range 1 East intersects the Gila River; 27. Thence, southerly up the Gila River to a point where the Gila River intersects with the southern line of Township 2 South; and 28. Thence, easterly along the southern line of Township 2 South to the point of beginning which is a point where the southern line of Township 2 South intersects with the eastern line Range 7 East				

* * * * *

[FR Doc. 97–29396 Filed 11–5–97; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–60

RIN 3090–AG16

Public Availability of Agency Records and Information Materials

AGENCY: Office of Management and Workplace Programs, (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration, GSA is revising its regulations that implement the Freedom of Information Act (FOIA), to incorporate changes since publication in 1988 of GSA's last final rule implementing the FOIA. This rule also issues instructions to current and former GSA employees concerning the response to subpoenas and other demands in litigation before judicial and administrative tribunals.

DATES: This rule is effective December 8, 1997.

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

SUPPLEMENTARY INFORMATION: A proposal to revise GSA's regulations that implement FOIA were published in the **Federal Register** on March 25, 1997, 62 FR 14081. This rule was not submitted to the Office of Management and Budget pursuant to Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, because it is not a significant regulatory action as defined in Executive Order 12866. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and the consequences of this rule, particularly the subpart that governs responses to subpoenas and other judicially enforceable demands for material or information. Specifically, the increase in the number of subpoenas and other demands to its employees in judicial or administrative proceedings, particularly in cases in which neither GSA nor the United States is a party, necessitates detailed and uniform instructions to be followed by current and former GSA employees.

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

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

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

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

Comprehensive Summary

I. Implementation of the FOIA

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

The revisions incorporate predisclosure notification procedures for confidential commercial information. The revisions also:

(a) Update organizational reference;

(b) Clarify the definition of available records to include electronic records;

(c) Revise fees for manual searches by clerical staff from $9 to $13 per hour or fraction of an hour and for manual searches and review by professional staff from $18 to $29 per hour or fraction of an hour, to more accurately reflect the full cost of searches and document review.

(d) Clarify GSA policy with regard to: (1) reconstructing records and providing incomplete records; (2) explaining compelling reasons for denial of access to records; and (3) requiring assurance of payment;

(e) Provide instructions on submission of FOIA requests via Telefax and fee payment by credit card;

(f) Extend the time limit for administrative appeal within GSA from 30 to 120 days; and

(g) Clarify GSA policy with respect to the availability of records from other sources that have statutory authority to provide information to the public at set fees.

(h) Incorporate, as appropriate, policies in Executive Order 12988 of February 5, 1996 on Civil Justice Reform.

II. Response to Demands in Judicial or Administrative Proceedings

This rule also amends 41 CFR 105–60.6, which pertains to production of information pursuant to demands in judicial or administrative proceedings. 41 CFR 105–60.6 is amended to prescribe instructions and procedures to be followed by current and former GSA employees with respect to the production and disclosure of material or information acquired as a result of performance of the person's official duties or because of the person's official status in response to judicially enforceable subpoenas or demands in judicial or administrative proceedings, except demands from the Congress or in Federal grand jury proceedings. Included are detailed factors to be considered by the appropriate authority within the General Services Administration in determining the Agency's response to a subpoena or other judicially enforceable demand, including widely acknowledged areas of privilege that may render disclosure or production inappropriate. Instructions concerning the appropriate response by employees and former employees to courts and other authorities are included.

The rules governing responses to subpoenas and demands in judicial or administrative proceedings provide instructions and procedures for employees and former employees regarding the internal operations of GSA and is not intended to be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the General Services Administration.

(a) GSA is amending this subpart to set forth uniform prescribed instructions and procedures to be complied with by current and former GSA employees concerning disclosure or production of agency materials or information in judicial or administrative proceedings in response to a judicially enforceable subpoena or demand. These instructions establish policy, assign responsibilities and prescribe procedures for responding to demands for GSA materials or testimony of current and former GSA employees in judicial and administrative proceedings. The instructions in 41 CFR subpart 105–60.6 do not apply to requests unrelated to litigation before judicial or administrative tribunals, to requests

made pursuant to the FOIA or Privacy Act, 5 U.S.C. 552 and 552a, respectively, to demands from the Congress, or to demands in Federal grand jury proceedings.

(b) These instructions are intended solely to provide an orderly means by which current and former GSA employees respond to demands for material and information covered by this rule, and to protect the interests of the United States, including the safeguarding of privileged or otherwise sensitive information. This rule is consistent with the decision in the landmark case of *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951) in which the Supreme Court upheld the ability of an agency head to issue regulations for the preservation of agency records, determined that an agency employee, acting pursuant to such instructions, could not be held in contempt of court for declining to produce records in response to a subpoena duces tecum. Accordingly, current and former GSA employees shall respond to the party on whose behalf the demand is issued only in accordance with the instructions and procedures required by 41 CFR subpart 105–60.6. Furthermore, the GSA can refuse to disclose materials or make information available based on the factors set forth in 41 CFR 105–60.605. These instructions and procedures are not intended to preclude disclosures or productions in compliance with court orders except where disclosure would be inappropriate even if required by a court, e.g., where disclosure would be legally prohibited or would be contrary to a recognized privilege.

Summary of Comments

GSA received two comments in response to its proposed rule. One comment was from an internal agency component and the other was external.

I. Comments on FOIA-Related Sections of the Rule

Both commenters indicated that the proposed rule does not address amendments to the FOIA required by the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104–231. The intent of the proposed rule was to amend GSA's current FOIA regulations to address changes occasioned by reorganizations within GSA, to incorporate formally procedures for notifying submitters of commercial or financial information of a request, entertain reasons for nondisclosure, and to provide procedures, for responding to subpoenas for GSA materials or information. This rule is not intended to address the recent amendments to the FOIA. Changes required by the amendments will be the subject of a subsequent proposed rule.

The internal GSA comment raised a number of issues—some nonsubstantive/editorial comments have been adopted. For the reasons which follow, substantive internal and external comments have or have not been adopted.

Subsection. 105–60.103–1. It is suggested that the FOIA does not require that GSA perform ''minor reprogramming'' when doing so is not costly or burdensome. We have adopted this suggestion and amended this subsection to read that GSA ''may perform minor reprogramming'' when doing so is not costly or burdensome.

Subsection. 105–60.103–2. It is recommended that the final rule modify or eliminate the requirement that a denial of information requested under the FOIA cite the compelling reason for denying access. The reason being that the current FOIA statutory exemptions already describe the basis for nondisclosure.

We have adopted this suggestion by eliminating the ''compelling reason'' language because other provisions of the rule encompass the intent. GSA's existing FOIA procedures state that the reasons for withholding will be clearly described in the letter to the requester, and GSA will not invoke an exemption if disclosure will cause no demonstrable harm to any governmental or private interest. 41 CFR 150–60.501(b), (c). We consider a demonstrable harm to any governmental or private interest to be a compelling reason for invoking a FOIA exemption. We have therefore eliminated the ''compelling reason'' language and substituted language stating that the harm to a Governmental or private interest will be specifically described in the denial letter to the requester.

Subsection. 105–60.305–1(d). As proposed, this subsection stated that GSA ''will'' provide a copy of the material in a form usable by the requester unless administratively burdensome to do so. It is recommended that this language be changed to read that to the extent ''practicable'' GSA will provide a copy of the material in the form specified by the requester. We have adopted this suggestion because the phrase ''to the extent practicable'' is deemed to encompass the concept of ''administratively burdensome.''

Subsection. 105–60.305–4(b). This subsection, as proposed, includes a provision that GSA will make copies of voluminous records available to a requester as quickly as possible and provide a number of ''additional'' copies of requested material when commercial reproduction services are not available to a requester. It is suggested that the first sentence of this provision be deleted because it is inconsistent with a provision in § 105–60.305–4(a) which allows GSA discretion to provide a requester the opportunity to receive copies or to review originals for inspection and copying. These subsections were not intended to be inconsistent or mutually exclusive. We have therefore made the following adjustments. Subsections 60.105–305–4(a) and (b) are amended to provide that GSA may offer a requester who seeks voluminous records not subject to exemption an option to review them at a mutually agreeable place and time and thereby avoid duplication fees for records not desired by the requester.

II. Comments on Subpoena-Related Section of the Proposed Rule

One commenter stated that so-called *''Touhy''* regulations of this kind are not separate authority to withhold information. It is not the intent of the proposed rule to confer such authority. Authority to withhold information in a litigative context is typically predicated on grounds and privileges recognized in statute, judicial interpretation, rules applicable to a particular forum or the Common Law. We have therefore added language to clarify that this regulation is not an independent authority to withhold information.

A commenter indicated that in cases where the agency/U.S. Government is a party a *Touhy* regulation cannot interfere with the application of the Federal Rules of Civil Procedure. It is not the intent of these regulations to do so. We have therefore added introductory language that states that where GSA is a party to a proceeding, nothing in these regulations shall operate or be interpreted to supersede or circumvent rules of procedures applicable to the forum in which the matter is pending. We have also made a conforming adjustment to the language in § 105–60.605(b). We have not, however, altered the language in § 105–60.105(b) which provides that the appropriate authority may, at the request of the U.S. Department of Justice, waive the requirements in this rule where the United States is a party. Because the U.S. Department of Justice typically represents the United States and its departments and agencies in litigation, we believe the extent to which a waiver in such cases is or is not appropriate in a particular case should be the result of a collaborative effort between our agencies.

Subsection 105–60.605(a). Both commenters questioned GSA's authority and/or ability to control the testimony of former employees. For reasons which follow, we have not adopted any suggestion that the regulations should not apply to former employees. A primary purpose behind the *Touhy* regulations is the establishment of a systematic means by which an agency can evaluate requests for production of official agency information and determine the extent to which there are legally defensible reasons for objection to production. These legitimate agency interests exist regardless of whether the requested information is in the possession for current or former agency employees.

When GSA becomes aware of a subpoena to a former employee for production of official GSA information through testimony or document production, it intends to use legally available means to ensure that agency interests are protected.

Subsection 105–60.605(b). A commenter suggested that an appropriate basis for waiver of the requirements in this rule are cases in which the United States has an interest in addition to cases in which the United States is a party. The situation may arise in so-called ''qui tam'' suits. We have added language to this section that recognizes this type of litigation which may, in coordination with the U.S. Department of Justice, be a situation in which a waiver may be appropriate.

Subsection 105–60.605(e). A commenter recommended that the list of factors to be considered by the appropriate authority in responding to demands contain the language ''include, but are but are not limited to:.'' The factors in § 105–60.605(e) already contemplate ''[A]ny additional factors unique to a particular demand for proceeding.'' Because this provision already incorporates the commenter's suggestion it has not been adopted.

List of Subjects in 41 Part 105–60

Freedom of information.

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

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

Sec.

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

§ 105–60.000 Scope of part.

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

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

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

(3) Operational and other appropriate agency records; and

(4) Agency proceedings.

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

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

Subpart 105–60.1—General Provisions

§ 105–60.101 Purpose.

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

§ 105–60.102 Application.

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

§ 105–60.103 Policy.

§ 105–60.103–1 Availability of records.

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

(a) GSA records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. GSA will disclose information in any existing GSA record, with noted exceptions, regardless of the form or format of the record. For example, records maintained in an electronic form, as part of a data base, will be provided on request using existing programming. GSA will provide the record in the form or format requested if the record is readily reproducible by the agency in that form or format. GSA will make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

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

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

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

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

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

(g) Fee for locating and duplicating records are listed in § 105–60.305–10.

§ 108–60.103–2 Applying exemptions.

GSA may deny a request for a GSA record if it falls within an exemption under the FOIA outlined in subpart 105–60.5 of this part. Except when a record is classified or when disclosure would violate any Federal statute, the authority to withhold a record from disclosure will likely cause harm to a Governmental or private interest. GSA will explain the harm to requesters when a record is denied under FOIA.

§ 105–60.104 Records of other agencies.

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

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

§ 105–60.201 Published information and rules.

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

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

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

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

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

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

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

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

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

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

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

§ 105–60.301 General.

GSA makes available to the public the materials described under 5 U.S.C. 552(a)(2), which are listed in § 105–60.302, at the locations listed in § 105–60.303. An Index of those materials as described in § 105–60.304 is available at GSA's Central Office in Washington, DC. Reasonable copying services are provided at the fees specified in § 105–60.305.

§ 105–60.302 Available materials.

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

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

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

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

§ 105–60.303 Rules for public inspection and copying.

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

Central Office (GSA Headquarters)

General Services Administration, Washington, DC, Telephone: 202–501–2262 or 202–501–1659, FAX: 202–501–2727, 1800 F Street, NW. (CAI), Washington, DC 20405

Office of the Inspector General

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

New England Region

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

Northeast and Caribbean Region

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

Mid-Atlantic Region

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

Southeast Sunbelt Region

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

Great Lakes Region

(Comprised of the States of Illinois, Indiana, Ohio, Minnesota, Michigan, and Wisconsin), General Services Administration (5ADB), 230 South Dearborn Street, Chicago, IL 60604, Telephone: 312–353–5383, FAX: 312–886–9893

Heartland Region

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

Greater Southwest Region

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

Rocky Mountain Region

(Comprised of the States of Colorado, North Dakota, South Dakota, Montana, Utah, and Wyoming), Business Service Center, General Services Administration (8PB–B), Building 41, Denver Federal Center, Denver, CO 80225, Telephone: 303–236–7408, FAX: 303–236–7403

Pacific Rim Region

(Comprised of the States of Hawaii, California, Nevada, Arizona, Guam, and Trust Territory of the Pacific), Business Service Center, General Services Administration (9ADB), 525 Market Street, San Francisco, CA 94105, Telephone: 415–522–2715, FAX: 415–522–2705

Northwest/Arctic Region

(Comprised of the States of Alaska, Idaho, Oregon, and Washington), General Services Administration (10L), GSA Center, 15th and C Streets, SW, Auburn, WA 98002, Telephone: 206–931–7007, FAX: 206–931–7195

National Capital Region

(Comprised of the District of Columbia and the surrounding metropolitan area), General Services Administration, (WPFA–L), 7th and D Streets SW., Washington, DC 20407, Telephone: 202–708–5854, FAX: 202–205–2478

(b) *Time.* The reading rooms or selected areas will be open to the public during the business hours of the GSA office where they are located.

(c) *Reading room and selected area rules.*—(1) *Handling of materials.* The removal or mutilation of materials is forbidden by law and is punishable by fine or imprisonment or both. When requested by a reading room or selected area attendant, a person inspecting materials must present for examination any briefcase, handbag, notebook, package, envelope, book or other article that could contain GSA informational materials.

(2) *Reproduction services.* The GSA Central Office or the Regional Business Service Centers will furnish reasonable copying and reproduction services for available materials at the fees specified in § 105–60.305.

§ 105–60.304 Index.

GSA will make available to any member of the public who requests it a current index identifying information for the public regarding any matter described in § 105–60.302.

§ 105–60.305 Fees.

§ 105–60.305–1 Definitions.

For the purpose of this part:

(a) A statute specifically providing for setting the level of fees for particular types of records (5 U.S.C. 552(a)(4)(A)(vii)) means any statute that specifically requires a Government agency to set the level of fees for particular types of records, as opposed to a statute that generally discusses such fees. Fees are required by statute to:

(1) Make Government information conveniently available to the public and to private sector organizations;

(2) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating Government information.

(b) The term *direct costs* means those expenditures that GSA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing and redacting) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the cost of operating duplicating machinery. Overhead expenses such as costs of space, and heating or lighting the facility where the records are stored are not included in direct costs.

(c) The term *search* includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Searches will be performed in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. Line-by-line searchers will not be undertaken when it would be more efficient to duplicate the entire document. ''Search'' for responsive material is not the same as ''review'' of a record to determine whether it is exempt from disclosure in whole or in part (see paragraph (e) of this section). Searches may be done manually or by computer using existing programming.

(d) The term *duplication* means the process of making a copy of a document in response to a FOIA request. Copies can take the form of paper, microfilm, audiovisual materials, or magnetic tapes or disks. To the extent practicable, GSA will provide a copy of the material in the form specified by the requester.

(e) The term *review* means the process of examining documents located in response to a request to determine if any portion of that document is permitted to be withheld and processing any documents for disclosure. See § 105–60.305–6.

(f) The term *commercial-use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. GSA will determine whether a requester properly belongs in this

category by determining how the requester will use the documents.

(g) The term *educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(h) The term *noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis as that term is used in paragraph (f) of this section and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(i) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. ''Freelance'' journalists will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by it.

§ 105–60.305–2 Scope of this subpart.

This subpart sets forth policies and procedures to be followed in the assessment and collection of fees from a requester for the search, review, and reproduction of GSA records.

§ 105–60.305–3 GSA records available without charge.

GSA records available to the public are displayed in the Business Service Center for each GSA region. The address and phone number of the Business Service Centers are listed in § 105–60.303. Certain material related to bids (excluding construction plans and specifications) and any material displayed are available without charge upon request.

§ 105–60.305–4 GSA records available at a fee.

(a) GSA will make a record not subject to exemption available at a time and place mutually agreed upon by GSA and the requester at fees shown in § 105–60.305–10. Waivers of these fees are available under the conditions described in § 105–60.305–13. GSA will agree to:

(1) Show the originals to the requester; or

(2) Make one copy available at a fee; or

(3) A combination of these alternatives.

(b) GSA will make copies of voluminous records as quickly as possible. GSA may, in its discretion, make a reasonable number of additional copies for a fee when commercial reproduction services are not available to the requester.

§ 105–60.305–5 Searches.

(a) GSA may charge for the time spent in the following activities in determining ''search time'' subject to applicable fees as provided in § 105–60.305–10:

(1) Time spent in trying to locate GSA records that come within the scope of the request;

(2) Time spent in either transporting a necessary agency searcher to a place of record storage, or in transporting records to the locations of a necessary agency searcher; and

(3) Direct costs of the use of computer time to locate and extract requested records.

(b) GSA will not charge for the time spent in monitoring a requester's inspection of disclosed agency records.

(c) GSA may assess fees for search time even if the search proves unsuccessful or if the records located are exempt from disclosure.

§ 105–60.305–6 Reviews.

(a) GSA will charge only commercial-use requesters for review time.

(b) GSA will charge for the time spent in the following activities in determining ''review time'' subject to applicable fees as provided in § 105–60.305–10:

(1) Time spent in examining a requested record to determine whether any or all of the record is exempt from disclosure, including time spent consulting with submitters of requested information; and

(2) Time spent in deleting exempt matter being withheld from records otherwise made available.

(c) GSA will not charge for:

(1) Time spent in resolving issues of law or policy regarding the application of exemptions; or

(2) Review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. GSA will charge for such subsequent review.

§ 105–60.305–7 Assurance of payment.

If fees for search, review, and reproduction will exceed $25 but will be less than $250, the requester must provide written assurance of payment before GSA will process the request. If this assurance is not included in the initial request, GSA will notify the requester that assurance of payment is required before the request is processed. GSA will offer requesters an opportunity to modify the request to reduce the fee.

§ 105–60.305–8 Prepayment of fees.

(a) *Fees over $250.* GSA will require prepayment of fees for search, review, and reproduction that are likely to exceed $250. When the anticipated total fee exceeds $250, the requester will receive notice to prepay and at the time will be given an opportunity to modify his or her request to reduce the fee. When it is anticipated that fees will exceed $250, GSA will notify the requester that it will not start processing a request until payment is received.

(b) *Delinquent payments.* As noted in § 105–60.305–12(d), requesters who are delinquent in paying for previous requests will be required to repay the old debt and to prepay for any subsequent request. GSA will inform the requester that it will process no additional requests until all fees are paid.

§ 105–60.305–9 Form of payment.

Requesters should pay fees by check or money order made out to the General Services Administration and addressed to the official named by GSA in its correspondence. Payment may also be made by means of Mastercard or Visa. For information concerning payment by credit cards, call 816–926–7551.

§ 105–60.305–10 Fee schedule.

(a) When GSA is aware that documents responsive to a request are maintained for distribution by an agency operating a statutory fee based program, GSA will inform the requester of the procedures for obtaining records from those sources.

(b) GSA will consider only the following costs in fees charged to requesters of GSA records:

(1) Review and search fees.

Manual searches by clerical staff: $13 per hour or fraction of an hour.

Manual searches and reviews by professional staff in cases in which clerical

staff would be unable to locate the requested records: $29 per hour or fraction of an hour.

Computer searches: Direct cost to GSA.

Transporation or special handling of records: Direct cost to GSA.

(2) Reproduction fees.

Pages no larger than 8½ by 14 inches, when reproduced by routine electrostatic copying: $0.10 per page.

Pages over 8½ by 14 inches: Direct cost of reproduction to GSA.

Pages requiring reduction, enlargement, or other special services: Direct cost of reproduction to GSA.

Reproduction by other than routine electrostatic copying:

Direct cost of reproduction to GSA.

(c) Any fees not provided for under paragraph (b) of this section, shall be calculated as direct costs, in accordance with § 105–60.305–1(b).

(d) GSA will assess fees based on the category of the requester as defined in § 105–60.305–1(f)–(i); i.e., commercial-use, educational and noncommercial scientific institutions, news media, and all other. The fees listed in paragraph (b) of this section apply with the following exceptions:

(1) GSA will not charge the requested if the fee is $25 or less as the cost of collection would be greater than the fee.

(2) Educational and noncommercial scientific institutions and the news media will be charged for the cost of reproduction alone. These requesters are entitled to the first 100 pages (paper copies) of duplication at no cost. The following are examples of how these fees are calculated:

(i) A request that results in 150 pages of material. No fee would be assessed for duplication of 150 pages. The reason is that these requesters are entitled to the first 100 pages at no charge. The charge for the remaining 50 pages would be $7.50. This amount would not be billed under the preceding section.

(ii) A request that results in 450 pages of material. The requester in this case would be charged $35. The reason is that the requester is entitled to the first 100 pages at no charge. The charge for the remaining 350 pages would be $35.

(3) Noncommercial requesters who are not included under paragraph (d)(2) of this section will be entitled to the first 100 pages (paper copies) of duplication at no cost and two hours of search without charge. The term ''search time'' generally refers to manual search. To apply this term to searchers made by computer, GSA will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing a manual search, GSA will begin assessing charges for computer search.

(4) GSA will charge commercial-use requesters fees which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial-use requester are not entitled to two hours of free search time.

(e) Determining the category of a requester. GSA may ask any requester to provide additional information at any time to determine his or her fee category.

§ 105–60.305–11 Fees for authenticated and attested copies.

The fees set forth in § 105–60.305–10 apply to requests for authenticated and attested copies of GSA records.

§ 105–60.305–12 Administrative actions to improve assessment and collection of fees.

(a) *Charging interest.* GSA may charge requesters who fail to pay fees interest on the amount billed starting on the 31st day following the month on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(b) *Effect of the Debt Collection Act of 1982.* GSA will take any action authorized by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), including disclosure to consumer reporting agencies, use of collection agencies, and assessment of penalties and administrative costs, where appropriate, to encourage payment.

(c) *Aggregating requests.* When the GSA reasonably believes that a requester, or group of requesters acting in concert, is attempting to break down a request into a series of requests related to the same subject for the purpose of evading the assessment of fees, GSA will combine any such requests and charges accordingly, including fees for previous requests where charges were not assessed. GSA will presume that multiple requests of this type within a 30-day period are made to avoid fees.

(d) *Advance payments.* Whenever a requester is delinquent in paying the fee for a previous request (i.e., within 30 days of the date of the billing), GSA will require the requester to pay the full amount owed plus any applicable interest penalties and administrative costs as provided in paragraph (a) of this section or to demonstrate that he or she has, in fact, paid the fee. In such cases, GSA will also require advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When advance payment is required under this section, the administrative time limits in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of appeals from initial denial plus permissible time extensions) will begin only after GSA has received the fee payments described in § 105–60.305–8.

§ 105–60.305–13 Waiver of fee.

(a) Any request for waiver or reduction of a fee should be included in the initial letter requesting access to GSA records under § 105–60.402–1. The waiver request should explain how disclosure of the information would contribute significantly to public understanding of the operations or activities of the Government and would not be primarily in the commercial interest of the requester. In responding to a request, GSA will consider the following factors:

(1) Whether the subject of the requested records concerns ''the operations or activities of the Government.'' The subject matter of the requested records must specifically concern identifiable operations or activities of the Federal Government. The connection between the records and the operations or activities must be direct and clear, not remote or attenuated.

(2) Whether the disclosure is ''likely to contribute'' to an understanding of Government operations or activities. In this connection, GSA will consider whether the requested information is already in the public domain. If it is, then disclosure of the information would not be likely to contribute to an understanding of Government operations or activities, as nothing new would be added to the public record.

(3) Whether disclosure of the requested information will contribute to ''public understanding.'' The focus here must be on the contribution to public understanding rather than personal benefit to be derived by the requester. For purposes of this analysis, the identity and qualifications of the requester should be considered, to determine whether the requester is in a position to contribute to public understanding through the requested disclosure.

(4) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so: whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

(b) GSA will ask the requester to furnish additional information if the initial request is insufficient to evaluate the merits of the request. GSA will not start processing a request until the fee waiver issue has been resolved unless the requester has provided written assurance of payment in full if the fee waiver is denied by the agency.

Subpart 105–60.4—Described Records

§ 105–60.401 General.

(a) Except for records made available in accordance with subparts 105–60.2 and 105–60.3 of this part, GSA will make records available to a requester promptly when the request reasonably describes the records unless GSA invokes an exemption in accordance with Subpart 105–60.5 of this part. Although the burden of reasonable description of the records rests with the requester, whenever practical GSA will assist requesters to describe records more specifically.

(b) Whenever a request does not reasonably describe the records requested, GSA may contact the requester to seek a more specific description. The 10-workday time limit set forth in § 105–60.402–2 will not start until the official identified in § 105–60.402–1 or other responding official receives a request reasonably describing the records.

§ 105–60.402 Procedures for making records available.

This subpart sets forth initial procedures for making records available when they are requested, including administrative procedures to be exhausted prior to seeking judicial review by an appropriate United States District Court.

§ 105–60.402–1 Submission of requests.

For records located in the GSA Central Office, the requester must submit a request in writing to the GSA FOIA Officer, General Services Administration (CAIR), Washington, DC 20405. Requesters may FAX requests to (202) 501–2727, or submit a request by e-mail to gsa.foi@gsa.gov. For records located in the Office of Inspector General, the requester must submit a request to the FOIA Officer, Office of Inspector General, General Services Administration, 1800 F Street NW., Room 5324, Washington, DC 20405. For records located in the GSA regional offices, the requester must submit a request to the FOIA Officer for the relevant region, at the address listed in § 105–60.303(a). Requests should include the words ''Freedom of Information Act Request'' prominently marked on both the face of the request letter and the envelop. The 10-workday time limit for agency decisions set forth in § 105–60.402–2 begins with receipt of a request in the office of the official identified in this section, unless the provisions under §§ 105–60.305–8 and 105–60.305–12(d) apply. Failure to include the words ''Freedom of Information Act Request'' or to submit a request to the official identified in this section will result in processing delays. A requester with questions concerning a FOIA request should contact the GSA FOIA Office, General Services Administration (CAI), 1800 F Street, NW, Washington, DC 20405, (202) 501–2262 or (202) 501–1659.

§ 105–60.402–2 Response to initial requests.

GSA will respond to an initial FOIA request which reasonably describes requested records, including a fee waiver request, within 10 workdays (that is, excluding Saturdays, Sundays, and legal holidays) after receipt of a request by the office of the appropriate official specified in § 105–60.402–1. This letter will provide the agency's decision with respect to disclosure or nondisclosure of the requested records, or, if appropriate, a decision on a request for a fee waiver. If the records to be disclosed are not provided with the initial letter, the records will be sent as soon as possible thereafter. In unusual circumstances, as described in § 105–60.404, GSA will inform the requester of the agency's need to take an extension of time, not to exceed and additional 10 workdays.

§ 105–60.403 Appeal within GSA.

(a) A requester who receives a denial of a request, in whole or in part, or a denial of a fee waiver request, may appeal that decision within GSA. A requester may also appeal the adequacy of the search if GSA determines that it has searched for but has no requested records. The requester must send the appeal to the GSA FOIA Officer, General Services Administration (CAI), 1800 F Street NW, Washington, DC 20405, regardless of whether the denial being appealed was made in the Central Office or in a regional office. For denials that originate in the Office of Inspector General, the requester must send the appeal to the Inspector General, General Services Administration, 1800 F Street NW., Washington, DC 20405.

(b) The GSA FOIA Officer must receive an appeal no later than 120 calendar days after receipt by the requester of the initial denial of access or fee waiver.

(c) An appeal must be in writing, include a brief statement of the reasons the requester thinks GSA should release the records, and enclose copies of the initial request and denial.

The appeal letter must include the words ''Freedom of Information Act Appeal'' on both the face of the appeal letter and on the envelope. Failure to follow these procedures will delay processing of the appeal. GSA has 20 workdays after receipt of a proper appeal to issue a determination of the appeal. The 20-workday time limit shall not begin until the GSA FOIA Officer receives the appeal. As noted in § 105–60.404, the GSA FOIA Officer may extend this time limit in unusual circumstances.

(d) A requester who receives a denial of an appeal, or who has not received a response to an appeal or initial request within the statutory timeframe may seek judicial review in the United States District Court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the United States District Court for the District of Columbia.

§ 105–60.404 Extension of time limits.

(a) In unusual circumstances, the GSA Central Office FOIA Officer or the regional FOIA Officer may extend the time limits prescribed in §§ 105–60.402 and 105–60.403. For purposes of this section, the term *unusual circumstances* means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are described in a single request;

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of GSA having substantial subject-matter interest therein; or

(4) The need to consult with the submitter of the requested information.

(b) If necessary, GSA may take more than one extension of time. However, the total extension of time to respond to any single request shall not exceed 10 workdays. The extension may be divided between the initial and appeal stages or within a single stage. GSA will provide written notice to the requester of any extension of time limits.

§ 105–60.405 Processing requests for confidential commercial information.

(a) *General.* The following additional procedures apply when processing

requests for confidential commercial information.

(b) *Definitions.* For the purposes of this section, the following definitions apply:

(1) *Confidential commercial information* means records provided to the government by a submitter that contain material arguably exempt from release under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means a person or entity that provides to the Government information that may constitute confidential commercial information. The term ''submitter'' includes, but is not limited to, individuals, partnerships, corporations, State governments, and foreign governments.

(c) *Designating confidential commercial information.* Since January 1, 1988, submitters must designate confidential commercial information as such when it is submitted to GSA or at a reasonable time thereafter. For information submitted in connection with negotiated procurements, the requirements of Federal Acquisition Regulation 48 CFR 15.407(c)(8) and 52.215–12 also apply.

(d) *Procedural requirements—consultation with the submitter.* (1) If GSA receives a FOIA request for potentially confidential commercial information, it will notify the submitter immediately by telephone and invite an opinion whether disclosure will or will not cause substantial competitive harm.

(2) GSA will follow up the telephonic notice promptly in writing before releasing any records unless paragraph (f) of this section applies.

(3) If the submitter indicates an objection to disclosure, GSA will give the submitter seven workdays from receipt of the letter to provide GSA with a detailed written explanation of how disclosure of any specified portion of the records would be competitively harmful.

(4) If the submitter verbally states that there is no objection to disclosure, GSA will confirm this fact in writing before disclosing any records.

(5) At the same time GSA notifies the submitter, it will also advise the requester that there will be a delay in responding to the request due to the need to consult with the submitter.

(6) GSA will review the reasons for nondisclosure before independently deciding whether the information must be released or should be withheld. If GSA decides to release the requested information, it will provide the submitter with a written statement explaining why his or her objections are not sustained. The letter to the submitter will contain a copy of the material to be disclosed or will offer the submitter an opportunity to review the material in one of GSA's offices. If GSA decides not to release the material, it will notify the submitter orally or in writing.

(7) If GSA determines to disclose information over a submitter's objections, it will inform the submitter that GSA will delay disclosure for five workdays from the estimated date the submitter receives GSA's decision before it releases the information. The decision letter to the requester shall state that GSA delay disclosure of material it has determined to disclose to allow for the notification of the submitter.

(e) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, GSA will notify a submitter whenever it receives a FOIA request for such information:

(i) If the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) If GSA has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted on or after January 1, 1988, GSA will notify a submitter whenever it determines that the agency may be required to disclose records:

(i) That the submitter has previously designated as privileged or confidential; or

(ii) That GSA believes could reasonably be expected to cause substantial competitive harm if disclosed.

(3) GSA will provide notice to a submitter for a period of up to 10 years after the date of submission.

(f) *When notice is not required.* The notice requirements of this section will not apply if:

(1) GSA determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by a law other than the FIOA;

(4) Disclosure is required by an agency rule that—

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the agency that are to be released under FIOA; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The information is not designated by the submitter as exempt from disclosure under paragraph (c) of this section, unless GSA has substantial reason to believe that the disclosure of the information would be competitively harmful; or

(6) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such cases, the agency must provide the submitter with written notice of any final administrative decision five workdays prior to disclosing the information.

(g) *Lawsuits.* If a FIOA requester sues the agency to compel disclosure of confidential commercial information, GSA will notify the submitter as soon as possible. If the submitter sues GSA to enjoin disclosure of the records, GSA will notify the requester.

Subpart 105–60.5—Exemptions

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

(a) 5 U.S.C. 552(b) provides that the requirements of the FIOA do not apply to matters that are:

(1) Specifically authorized under the criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only

to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful natural security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions; or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) GSA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section. If GSA must delete information from a record before disclosing it, this information, and the reasons for withholding it, will be clearly described in the cover letter to the requester or in an attachment.

(c) GSA will invoke no exemption under this section to deny access to records that would be available pursuant to a request made under the Privacy Act of 1974 (5 U.S.C. 522a) and implementing regulations, 41 CFR part 105–64, or if disclosure would cause no demonstrable harm to any governmental or private interest.

(d) Whenever a request is made that involves access to records described in § 105–60.501(a)(7)(i) and the investigation or proceeding involves a possible violation of criminal law, and there is reason to believe that the subject of the investigation or proceeding is not aware of it, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(e) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(f) Whenever a request is made that involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in paragraph (a)(1) of this section, the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

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

§ 105–60.601 Purpose and scope of subpart.

(a) By virtue of the authority vested in the Administrator of General Services by 5 U.S.C. 301 and 40 U.S.C. 486(c) this subpart establishes instructions and procedures to be followed by current and former employees of the General Services Administration in response to subpoenas or similar demands issued in judicial or administrative proceedings for production or disclosure of material or information obtained as part of the performance of a person's official duties or because of the person's official status. Nothing in these instructions applies to responses to subpoenas or demands issued by the Congress or in Federal grand jury proceedings.

(b) This subpart provides instructions regarding the internal operations of GSA and the conduct of its employees, and is not intended and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against GSA.

(c) These regulations provide for procedures and a systematic means by which GSA can evaluate whether it should comply with a demand for official GSA information or whether applicable privileges or statutes provide a legitimate basis for withholding the demanded information. These regulations do not provide independent authority to withhold information. In proceedings to which GSA is a party, these regulations shall not be interpreted or applied to supersede or frustrate established rules of procedure applicable to the forum in which the matter is pending.

§ 105–60.602 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Material* means any document, record, file or data, regardless of the physical form or the media by or through that it is maintained or recorded, that was generated or acquired by a current or former GSA employee by reason of the performance of that person's official duties or because of the person's official status, or any other tangible item, *e.g.*, personal property possessed or controlled by GSA.

(b) *Information* means any knowledge or facts contained in material, and any knowledge or facts acquired by current or former GSA employee as part of the performance of that person's official duties or because of that person's official status.

(c) *Demand* means any subpoena, order, or similar demand for the production or disclosure of material, information or testimony regarding such material or information, issued by a court or other authority in a judicial or administrative proceeding, excluding congressional subpoenas or demands in Federal Grand Jury proceedings, and served upon a present or former GSA employee.

(d) *Appropriate Authority* means the following officials who are delegated authority to approve or deny responses to demands for material, information or testimony:

(1) The Counsel to the Inspector General for material and information that is the responsibility of the GSA Office of Inspector General or testimony of current or former employees of the Office of the Inspector General;

(2) The Counsel to the GSA Board of Contract Appeals for material and information that is the responsibility of the Board of Contract Appeals or testimony of current or former Board of Contract Appeals employees;

(3) The GSA General Counsel, Associate General Counsel(s) or Regional Counsel(s) for all material, information, or testimony not covered by paragraphs (d)(1) and (2) of this section.

§ 105–60.603 Acceptance of service of a subpoena duces tecum or other legal demand on behalf of the General Services Administration.

(a) The Administrator of General Services Administration and the following officials are the only GSA personnel authorized to accept service of a subpoena or other legal demand on behalf of GSA: The GSA General Counsel and Associate General Counsel(s) and, with respect to material or information that is the responsibility of a regional office, the Regional Administrator and the Regional Counsel. The Inspector General and Counsel to the Inspector General, as well as the Chairman and Vice Chairman of the Board of Contract Appeals, are authorized to accept service for material or information which is the responsibility of their respective organizations.

(b) A present or former GSA employee not authorized to accept service of a subpoena or other demand for material, information or testimony obtained in an official capacity shall respectfully inform the process serve that he or she is not authorized to accept service on behalf of GSA and refer the process server to an appropriate official listed in paragraph (a) of this section.

(c) A Regional Administrator or Regional Counsel shall notify the General Counsel of a demand that may raise policy concerns or affect multiple regions.

§ 105–60.604 Production or disclosure prohibited unless approved by the Appropriate Authority.

No current or former GSA employee shall, in response to a demand, produce any material or disclose, through testimony or other means, any information covered by this subpart, without prior approval of the Appropriate Authority.

§ 105–60.605 Procedure in the event of a demand for production or disclosure.

(a) Whenever service of demand is attempted in person or via mail upon a current or former GSA employee for the production of material or the disclosure of information covered by this subpart, the employee or former employee shall immediately notify the Appropriate Authority through his or her supervisor or his or her former service, staff, or regional office. The supervisor shall notify the Appropriate Authority. For current or former employees of the Office of Inspector General located in regional offices, Counsel to the Inspector General shall be notified through the immediate supervisor or former employing field office.

(b) The Appropriate Authority shall require that the party seeking material or testimony provide the Appropriate Authority with an affidavit, declaration, statement, and/or a plan as described in paragraphs (c)(1), (2) and (3) of this section if not included with or described in the demand. The Appropriate Authority may in his or her discretion waive this requirement for a demand arising out of proceedings to which GSA or the United States is a party and in proceedings in which the United States or GSA is not a party but has an interest such as so-called Qui Tam proceedings, or where the Appropriate Authority has independent knowledge of facts relevant to the matter upon which an informed determination can be made. Any waiver will be coordinated with the United States Department of Justice (DOJ) in proceedings in which GSA, its current or former employees, or the United States are represented by DOJ.

(c)(1) Oral testimony. If oral testimony is sought by a demand, the Appropriate Authority shall require the party seeking the testimony or the party's attorney to provide, by affidavit or other statement, a detailed summary of the testimony sought and its relevance to the proceedings. Any authorization for the testimony of a current or former GSA employee shall be limited to the scope of the demand as summarized in such statement or affidavit.

(2) Production of material. When information other than oral testimony is sought by a demand, the Appropriate Authority shall require the party seeking production or the party's attorney to provide a detailed summary, by affidavit or other statement, of the information sought and its relevance to the proceeding.

(3) The Appropriate Authority may require a plan or other information from the party seeking testimony or production of material of all demands reasonably foreseeable, including, but not limited to, names of all current and former GSA and employees from whom testimony or production is or will likely be sought, areas of inquiry, for current employees the length of time away from duty anticipated, and identification of documents to be used in each deposition or other testimony, where appropriate.

(d) The Appropriate Authority will notify the current or former employee, the appropriate supervisor, and such other persons as circumstances may warrant, whether disclosure or production is authorized, and of any conditions or limitations to disclosure or production.

(e) Factors to be considered by the Appropriate Authority in responding to demands:

(1) Whether disclosure or production is appropriate under rules of procedure governing the proceeding out of which the demand arose;

(2) The relevance of the testimony or documents to the proceedings;

(3) The impact of the relevant substantive law concerning applicable privileges recognized by statute, common law; judicial interpretation or similar authority;

(4) The information provided by the issuer of the demand in response to requests by the Appropriate Authority pursuant to paragraphs (b) and (c) of this section;

(5) The steps taken by the issuer of the demand to minimize the burden of disclosure or production on GSA, including but not limited to willingness to accept authenticated copies of material in lieu of personal appearance by GSA employees;

(6) The impact on pending or potential litigation involving GSA or the United States as a party;

(7) In consultation with the head of the GSA organizational component affected, the burden to GSA that disclosure or production would entail; and

(8) Any additional factors unique to a particular demand or proceeding.

(f) Examples of situations in which authority for production will likely be denied by the Appropriate Authority are those in which production would:

(1) Violate a statute or a specific regulation;

(2) Reveal classified information, unless appropriately declassified by the originating agency;

(3) Reveal a confidential source or informant, unless the investigative agency and the source or informant consent;

(4) Reveal records or information compiled for law enforcement purposes that would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would be impaired;

(5) Reveal trade secrets or commercial or financial information that is privileged or confidential without prior consultation with the person from whom it was obtained; or

(6) Be contrary to a recognized privilege.

(g) The Appropriate Authority's determination, including any reasons for denial or limitations on disclosure or production, shall be made as expeditiously as possible and shall be communicated in writing to the issuer

of the demand and appropriate current or former GSA employee(s). In proceedings in which GSA, its current or former employees, or the United States are represented by DOJ the determination shall be coordinated with DOJ, which may respond to the issuer of the subpoenas or demand in lieu of the Appropriate Authority.

§ 105–60.606 Procedure where response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before the Appropriate Authority's decision is issued, a GSA attorney designated by the Appropriate Authority for the purpose shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the judicial or other authority with a copy of the instructions contained in this subpart. The attorney shall inform the court or other authority that the demand has been or is being referred for the prompt consideration by the Appropriate Authority. The attonery shall respectfully request the judicial or administrative authority to stay the demand pending receipt of the requested instructions.

(b) The designated GSA attorney shall coordinate GSA's response with DOJ's Civil Division or the relevant Office of the United States Attorney and may request that a DOJ or Assistant United States Attorney appear with the employee in addition to or in lieu of a designated GSA attorney.

(c) If an immediate demand for production or disclosure is made in circumstances which preclude the appearance of a GSA or DOJ attorney on the behalf of the employee or the former employee, the employee or former employee shall respectfully make a request to the demanding authority for sufficient time to obtain advice of counsel.

§ 105–60.607 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 105–60.606 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions by the Appropriate Authority not to produce the material or disclosure the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply, citing these instructions and the decision of the United States Supreme Court in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

§ 105–60.608 Fees, expenses, and costs.

(a) In consultation with the Appropriate Authority, a current employee who appears as a witness pursuant to a demand shall ensure that he or she receives all fees and expenses, including travel expenses, to which witnesses are entitled pursuant to rules applicable to the judicial or administrative proceedings out of which the demand arose.

(b) Witness fees and reimbursement for expenses received by a GSA employee shall be disposed of in accordance with rules applicable to Federal employees in effect at the time.

(c) Reimbursement to the GSA for costs associated with producing material pursuant to a demand shall be determined in accordance with rules applicable to the proceedings out of which the demand arose.

Dated: October 28, 1997.

David J. Barram,

Administrator.

[FR Doc. 97–29061 Filed 11–5–97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21 and 74

[MM Docket No. 97–217; FCC 97–360]

MDS and ITFS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Notice of Proposed Rulemaking (''*NPRM*''), the Commission seeks comment on the proposed amendment of its rules to enable Multipoint Distribution Service (''MDS'') and Instructional Television Fixed Service (''ITFS'') licensees to engage in fixed two-way transmissions. The Commission seeks comment on its proposals to enhance the flexibility of MDS and ITFS operations through facilitated use of response stations, use of booster stations with program origination capability in a cellular configuration, and use of variable bandwidth (''subchanneling'' or ''superchanneling''). Comment is sought regarding the technical, procedural and economic effects of implementing the proposed rule changes.

DATES: Comments must be filed on or before December 9, 1997, and reply comments on or before January 8, 1998. Written comments by the public on the Initial Regulatory Flexibility Analysis are due December 9, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael J. Jacobs, (202) 418–7066 or Dave Roberts, (202) 418–1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MM Docket No. 97–217, adopted October 7, 1997, and released October 10, 1997. The full text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of Notice of Proposed Rulemaking on MDS and ITFS Two-Way Transmissions

1. This *NPRM* was issued in response to a petition for rulemaking filed by a group of 111 educators and participants in the wireless cable industry (collectively, ''Petitioners''), comprised of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, and industry consultants and associations. In this proceeding, Petitioners are asking that we implement a series of technical rule changes that would give MDS and ITFS licensees the needed flexibility to fully exploit digital technology in delivering two-way communications services. Currently, MDS and ITFS licensees are authorized to use digital technology in order to increase the number of usable one-way channels available to them, leased ITFS frequencies and MDS channels may be used for asymmetrical high speed digital data applications so long as such usage complies with the Commission's technical rules and its declaratory ruling on the use of digital modulation by MDS and ITFS stations (''*Digital Declaratory Ruling,*'' 11 FCC Rcd 18839 (1996)), and MDS licensees have been permitted to provide two-way service on a limited basis. While 125 kHz response channels are currently allocated for use in association with most MDS and ITFS stations, Petitioners anticipate that many MDS and ITFS licensees and wireless cable operators engaging in two-way transmissions will require more capacity for return paths than is available through such 125 kHz channels. Moreover, because these 125 kHz response channels must be individually licensed under the

Commission's existing rules, Petitioners argue that the existing rules are too cumbersome and impose too great a financial burden on licensees seeking to implement two-way wireless services. Instead, Petitioners propose a system under which MDS and ITFS licensees would be permitted to utilize all or part of a 6 MHz channel for return path transmissions from subscriber premises, to cellularize their transmission systems to take advantage of spectrally efficient frequency reuse techniques, and to employ modulation schemes consistent with bandwidths either larger or smaller than 6 MHz, all while providing incumbent MDS and ITFS licensees interference protection equivalent to what they currently receive.

2. Petitioners emphasized that they are not seeking a reallocation of spectrum, but instead are seeking to modify the technical rules governing the spectrum already allotted to MDS and ITFS. We placed the petition for rulemaking on public notice, and received comments and reply comments from wireless cable industry participants that generally supported Petitioners' proposals. While many ITFS commenters expressed concern over the details of Petitioners' proposals, the comments and reply comments reflected a consensus in the MDS and ITFS communities that the concept of two-way offerings would greatly aid both services. We believe that several of Petitioners' proposals may be in the public interest in that they would enhance the MDS and ITFS services by providing licensees additional flexibility in order to implement two-way services. Such flexibility would be facilitated by changing certain of our technical rules, amending some of our programming rules, and modifying some of our current application procedures for MDS and ITFS facilities. The *NPRM* seeks comment on the various issues raised by these proposals, and puts forth some counter-proposals to those proffered by Petitioners.

3. *Revised Definitions of Service.* The ITFS/MDS spectrum is used primarily for the provision of either one-way video service to students, in the ITFS context, or, in the MDS context, wireless cable service to subscribers, which likewise historically has constituted primarily the provision of one-way video services. While our Rules already permit MDS licensees to provide non-video services, under our current regulatory scheme, MDS operators typically only provide two-way service to subscribers using telephone return links or individually licensed subscriber premises stations. This is an outgrowth of the basic one-way approach to MDS transmission from which our current rules originated.

4. We propose changes to MDS and ITFS service definitions to fully incorporate the concept of two-way transmission and which reflect the reorientation of the regulatory approach to a flexible service, from that of an essentially one-way service. A regulatory system would be created authorizing the use of response stations and response station hubs to enable the two-way operation of wireless cable systems. We solicit comment on this new service paradigm.

5. Specifically, we propose to amend the definition of a ''response station'' to indicate that licensees may use all or part of any of their 6 MHz channels as a response channel. Response stations would be the means of transmission from a subscriber's premises, and could use either separate transmitting antennas for return paths or combined transmitting/receiving antennas. The concept of a response station hub is added, and these hubs would serve as the collection points for signals from the response stations in a multipoint-to-point configuration for upstream signal flow. Thus, response stations would not need to be licensed individually, and they could operate at lower power because the response station hubs would be located closer to subscriber premises than are current transmitter sites. Commenter Caritas Telecommunications, Inc. (''Caritas'') proposed that we limit the availability of response channels to MDS channels 1, 2 and 2A, converting those channels from their current use for point-to-multipoint transmissions to subscribers' homes to use for transmission return paths. We tentatively decline to adopt this counter-proposal and agree with Petitioners that it would both artificially limit the amount of spectrum that could be used for return paths and unnecessarily prevent ITFS licensees from using their own channels for return paths. We solicit comment on the response station hub concept and its implications. We also solicit comments on our proposals regarding the expanded definition of response stations, including provision for transmissions on all available MDS and ITFS channels, and on Caritas' counter-proposal.

6. We further propose to amend the definition for ''signal booster stations'' to allow such stations to originate transmissions, as well as to relay transmissions from other stations. Booster stations would be used to cellularize wireless cable operations, which now may operate in areas too large to be served by a single station. Permitting boosters to originate as well as relay programming would facilitate frequency reuse cellular configurations and two-way high speed Internet access and other services. We seek comment on the proposal to expand the role of booster stations in this manner. Flexible subchannelization (*i.e.,* the division of a channel of a particular bandwidth into multiple channels of smaller bandwidth) also would be permitted to allow more efficient channel reuse within a given service area, and superchannelization (*i.e.,* the combining of more than one channel into a single, wider channel) would be allowed and could be used for the transmission of high data rates and/or the use of spread spectrum emissions. Superchannels also would be licensed to multiple entities in many instances, due to the fact that the interleaved, non-contiguous channels in this band generally are licensed to different entities.

Subchannels and superchannels would be limited to digital transmissions with uniform spectral power density across the bandwidth, in order to make possible the use of spectral density analysis as part of the interference analysis process. We seek comment on these channelization proposals.

7. Finally, as noted above, 125 kHz channels are currently allocated as response channels for use in association with most MDS and ITFS stations, and as such they would provide further capacity as return paths in the cellularized two-way scheme. In their Comments, Petitioners add that the Commission should also permit the use of the 125 kHz channels for point-to-multipoint transmissions. Petitioners explain that for systems using digital technologies, there is a need to transmit downstream control signals over side channels that require less than a full 6 MHz channel, for instance for control over digital set top decoders or control over two-way communication systems. Petitioners maintain that use of the 125 kHz channels for such applications is beneficial in that it preserves the 6 MHz channels for transmissions that require greater bandwidth, and it can lead to reduced equipment costs. Petitioners also propound that to further offer flexibility to create channels with bandwidths exceeding 125 kHz, the Commission should remove the current rule provisions which require that the 125 kHz channels only be used in conjunction with their associated 6 MHz channels. While also proposing that the 125 kHz channels be used for additional point-to-multipoint spectrum, Caritas goes a step further than Petitioners, advancing that the Commission should

reallocate the 125 kHz channels to be combined into one continuous piece of spectrum to be used for such purposes. We are proposing rules in accordance with the most flexible framework ultimately requested by Petitioners for use of the 125 kHz channels, including allowing superchannelization or subchannelization of these stations regardless of whether they are used as response stations or for point-to-multipoint transmissions. We believe that these changes are sufficient to derive the benefits explained by Petitioners, and that a reallocation and the complications associated with that is not necessary. We solicit comment on these proposals regarding use of the 125 kHz channels.

8. *Interference Considerations.* In the *Digital Declaratory Ruling,* we waived our rules with respect to out-of-band emissions and permitted the use of a somewhat relaxed spectral mask for digital transmission modes. This action was taken because the Commission concluded that the application of the current analog emission mask to digital emissions would be unnecessarily restrictive and could increase the cost of digital equipment while providing no benefit. In addition, the results of laboratory tests submitted in connection with the Commission's consideration of this issue demonstrated that a digital station using the relaxed mask is less likely to cause interference than an analog station using the existing, more restrictive, mask.

9. In the *NPRM,* we propose to permanently incorporate into the Rules the spectral mask waiver provisions of the *Digital Declaratory Ruling,* specifically for primary system transmitters and single channel booster transmitters with a power greater than −9 dBW EIRP; masks are further specified, albeit with certain modifications, for sub-and superchannels, response stations, and booster stations transmitting on multiple non-contiguous channels carrying separate signals and with an EIRP greater than −9 dBW (''broadband boosters''). As an exception to the spectral masks for the 125 kHz channels, discrete spurious emissions above the upper and below the lower authorized channel edges would be permitted under certain conditions. And Petitioners request that no spectral mask whatsoever be applicable to booster stations with an EIRP of −9 dBW or less. Petitioners argue that such low power stations have only a very limited potential for interference, and that applying strict emission limitations to them would significantly increase the price of equipment with no benefit to the user or nearby licensees in terms of added interference protection. We seek comment on whether the degree of attenuation proposed for these various schemes is sufficient to provide adequate adjacent channel interference protection. We also request comment on whether eliminating a spectral mask for low power boosters presents an undue interference risk, and, if so, which additional interference safeguards should be adopted.

10. As in the *Digital Declaratory Ruling,* all spectral mask calculations involving digital emissions will use the average power of the emission across its bandwidth, and steps must be taken to ensure substantially uniform power density across the bandwidth in use, including constant power per unit of bandwidth for sub-and superchannels. We also propose to place a limit of 18 dBW EIRP on response station transmitters in cellularized systems, and that higher power facilities be authorized separately and require a site specific interference analysis. Given the extremely complex interference situation attendant to cellularized operations and the heavily encumbered nature of MDS and ITFS environments, we do not believe that it would be prudent to permit essentially unlimited numbers of response station transmitters with 2000 watts (33 dBW EIRP) of radiated power, as Petitioners requested. However, while current MDS and ITFS rules limit booster power to 18 dBW EIRP, we propose to allow boosters to operate up to 33 dBW EIRP, the maximum power level for MDS and ITFS. We seek comment on this approach to transmitter power within the two-way scheme. We also seek comment on rule proposals with respect to frequency tolerance requirements for digital transmissions, type acceptance of response station transmitters and boosters, and radio frequency (''RF'') emissions for MDS/ITFS return path transmissions.

11. The Commission's current regulations in ITFS and MDS for interference protection were designed to minimize the potential for destructive cochannel and adjacent channel interference between systems located in proximity to each other. The specific criteria for protection are of two forms, namely, (1) cochannel and adjacent channel desired-to-undesired signal (D/U) ratios and (2) limits on the magnitude of a station's free space field as measured at the edge of the station's protected service area. For cochannel interference protection, an applicant must configure its system so that the signals from each of its transmitters are at least 45 dB weaker than the signals of the existing licensee's transmitters within the licensee's protected service area and/or, in the case of ITFS licensees, at the licensee's protected receiver sites. For adjacent channel protection, the ratio must be at least 0 dB. In order to meet the second form of protection, an applicant generally must be able to demonstrate that the magnitude of the free space radiated field from each transmitter does not exceed a particular limit (*i.e.,* a power flux density −73 dBW/m^2) at the boundary of the applicant's service area.

12. Petitioners propose to apply the existing interference criteria in essentially unchanged form, and to supplement them with similar new criteria to be applied to hub, booster, and response stations. Petitioners further propose to aggregate the power from a primary station and all associated booster stations for one set of interference calculations, and that a separate set of interference calculations be performed using the aggregated power from response stations. However, we counter-propose that a calculation of the combined field produced by the primary station transmitter, all boosters, and the aggregated power from response stations within a system be utilized to determine compliance with interference standards. We seek comment on the relative merits of Petitioners' proposed approach and our counter-proposal. We also emphasize that where an interfered-with receive antenna meets the antenna characteristics set forth in our MDS and ITFS rules, the station causing the harmful interference is responsible for curing it.

13. *Interference Prediction Methodology*. In order to predict the interference potential of response stations in the proposed cellularized scheme, Petitioners seek to employ a three-step process using statistical analysis and worst-case assumptions. In step one, the hub station response service area (''RSA'') is defined and a grid of points is located within this area representative of the expected actual distribution of response station transmitters within the area. Regions within the area are defined so that an adequate population uniformity exists for purposes of predicting interference from a distribution of response station transmitters. Population uniformity is determined using a complex formula involving evaluation of the population density within each ZIP Code within the planned boundaries of a region. Population uniformity is an important facet of each region because Petitioners assume, *a priori*, that the distribution of response station transmitters will be

closely matched to population distribution within each region.

14. In step two, Petitioners propose to identify the technical characteristics of response stations which will be associated with each point in the RSA grid. One or more classes of response stations would be identified within the RSA and its regions, with each class being a function of several variables, such as transmitted power (EIRP), antenna height, frequency, bandwidth, and maximum number of assumed simultaneously operated response stations in the regional class; these characteristics and others would be specified in the response hub application. Differentiating between classes is asserted by Petitioners to be essential for accurately calculating the interference potential of the response stations within an RSA, because differentiable technical characteristics between classes likely will lead to differentiable potentials for causing interference to neighboring systems.

15. The final step in calculating response station interference would require combining the radiated fields of all response stations of all classes, regions and RSAs within the primary station's protected service area. In order to simplify this calculation, the statistical population uniformity within each region would be used as a basis for grouping response stations of all classes in proximity at the grid points laid out within each RSA; multiple classes could share the same grid points. For each class of response stations assigned to a grid point, a set of worst-case assumptions would be made concerning the transmitting antenna radiation pattern, transmitter power (EIRP) and antenna height. Several complex calculations, including procedures for checking the initial calculations, combining the radiated field for all of the transmitters for each class of response station at each grid point from all RSAs would then be used to evaluate compliance with the interference criteria. Thus, whereas under current rules such compliance is calculated on a per-transmitter basis, Petitioners' proposed system would necessitate that it be calculated on an aggregated basis, covering hundreds or thousands of transmitters and their combined interference potential to neighboring systems. Petitioners argue that licensees should be free, upon notification to the Commission, to continue adding response station transmitters within their systems until calculations indicate that permissible interference values would be exceeded, and that using worst-case assumptions in their methodology has built in an interference protection buffer for situations where more stations or a different mix of stations than anticipated are activated in an RSA.

16. In the *NPRM*, we caution that the interference prediction methodology is based solely on assumptions, thus leading to a statistical picture of response station interference potential which gives an uncertain approximation of the operating environment, although Petitioners also claim that this approximation is conservative. In addition, we discuss how the small scale test conducted by Petitioners in the flat and relatively unimpeded terrain of Tucson, AZ, while useful, may not be generally applicable to the very diverse geographical and interference environments in which MDS and ITFS systems operate. We also express concern that the proposed methodology is so complex that it may be very difficult to implement and enforce, and may lead to numerous filings updating system configurations, which would present severe burdens upon existing licensees and operators needing to analyze these filings in order to verify that no harmful interference will result to their systems. Notwithstanding these reservations, however, we express our belief that Petitioners' overall goal of facilitating cellularization of the services is very forward-looking, and warrants an opportunity to proceed despite the complications and uncertainties which could arise. Thus, we propose to adopt the methodology and seek comment on it, but we also specifically solicit suggestions for alternative methods for prediction of interference to and from cellularized systems. For example, we ask to what extent ''worst case'' analysis could serve a sufficient approximation to a more exact analysis, such as a determination of noninterference based solely on terrain shadowing, and to what geographical extent individual response station areas should be aggregated in large BTAs.

17. *Modulation Methods.* In the *Digital Declaratory Ruling*, we authorized the use of Quadrature Amplitude Modulation (''QAM'') and Vestigial Sideband (''VSB'') modulation. While we declined to consider the use of other digital modulation methods in the context of that proceeding, we stated that we would consider future requests for declaratory rulings where the requesters submit appropriate data to demonstrate that other modulation techniques could be used in a manner that would not interfere with MDS and ITFS analog and digital operations. In the current rulemaking proceeding, Pace Telecommunications Consortium (''Pace'') commented that the Commission should immediately grant ITFS and MDS licensees the flexibility to use whatever digital techniques best serve their needs, with interference controlled through the use of power spectral density limits and spectral masks.

18. As in the *Digital Declaratory Ruling*, in the *NPRM* we decline to adopt one or more ''standard'' digital technologies. We will retain or add provisions for accommodating the use of different modulation types, as requested by Petitioners. In addition, because we wish to encourage parties to continue to identify different digital modulation schemes that could be useful in MDS and ITFS, we emphasize that we remain open to considering future requests for declaratory rulings in accordance with the *Digital Declaratory Ruling*, upon submission of appropriate data. We further invite comment on whether there is a basis for concluding that use of particular digital modulation types by MDS and ITFS stations other than VSB and QAM would not be prone to interference, based on the current 45 dB/0 dB protection ratios for cochannel and adjacent channel interference respectively, *i.e.* that such modulation formats should be permitted without requiring test data. For example, one modulation type may be a subset of VSB and QAM and, therefore, is covered under the industry tests used to support the *Digital Declaratory Ruling.*

19. *Application Procedures.* Petitioners set forth an application processing scheme, governing the filing of applications for new or modified response station hubs or boosters, that would substantially shift review of applications from Commission staff and leave much of the interference environment to be worked out among licensees. Petitioners propose that we adopt a rolling, one-day filing window system. While each applicant would be required to demonstrate protection of existing or previously proposed facilities, all acceptable applications filed on the same day would be granted and the filers left to resolve incompatibilities amongst themselves with little or no intervention by Commission staff. Specifically, Petitioners propose that applications would be placed on public notice without prior staff review of interference studies, and that the applications would be automatically granted on the 61st day after that notice unless a petition to deny was filed or the Commission notified the applicant prior to that date that a grant would not be made.

20. Petitioners speculate that a large number of applications are likely to be filed once the new rules become effective and that many of the applications submitted at that time will conflict with others filed simultaneously. In order to smooth the transition to the rolling one-day filing window application processing system, Petitioners propose that a special one-week window be employed when the new rules first go into effect, and that all applications filed during this window be deemed filed as of the same day. Following the publication of a public notice announcing the tendering for filing of applications submitted during that window, applicants would have a period of 60 days to amend their applications to resolve conflicts. During this 60-day period, no additional applications could be filed, affording those who filed during the one-week window an opportunity to resolve any conflicts without fear that, during the pendency of settlement discussions, third parties will propose facilities that will have to be protected if the original applicants amend their applications. After this initial 60 day period, public notice and automatic grant procedures akin to those proposed by Petitioners for the rolling one-day filing windows would be implemented. Following Petitioners' plan, on the 61st day after the publication of the second public notice, applications for authorizations for response station hubs and for booster stations henceforth would be accepted and processed under the rolling one-day filing window approach.

21. Although we tentatively accept Petitioners' proposal to place the applications on public notice without prior staff review of the interference studies, we tentatively reject their proposal for automatic grant of the applications. We believe that placing the applications on public notice without prior interference analysis will serve to speed the review process by making the relevant data available to all interested parties as quickly as possible. However, we believe that an automatic grant at the end of the proposed 60 day public notice period will not provide an adequate opportunity for interested parties or, where necessary, for Commission staff, to review the interference studies or for the Commission to make a reasoned determination in complex cases. We solicit comment on our conclusions.

22. In addition, while Petitioners' proposal in this area presents a promising start, it still leaves a number of concerns and questions unresolved. Commenter Catholic Television Network (''CTN'') raised the concern that the one-day rolling filing window will create an undue burden on ITFS licensees, who may find themselves required to evaluate a continuing stream of applications. We solicit comment on how such a concern could be resolved in the context of the one-day rolling filing window. We also solicit comment on whether we should retain our current periodic filing window system used for ITFS applications and what advantages and disadvantages exist between the existing system and the proposed system. Furthermore, Petitioners' proposal leaves a number of significant questions unresolved regarding the processing of conflicting applications. For example what should be the result in the event that same-day filers of closely-spaced conflicting applications cannot resolve their differences? Should the applicants be ordered into binding arbitration for which they will assume the cost and whose outcome will be finally subject to Commission approval? Should the Commission simply freeze the applications until the parties are able to resolve their differences? Should the Commission's staff function as a referee in such cases and, if so, should it adopt any sort of comparative criteria to guide its decisions? Should the staff adopt some type of point system to rate competing applicants? We seek comment on these questions.

23. We tentatively propose the following processing rules, taking into consideration the concerns of the various commenters. Under these rules, applicants would file an original and two copies of their system proposal and serve a copy of the proposal on any party whose MDS/ITFS interests may be affected by the proposal. A complete application would then be placed on public notice for a 60-day initial comment period. Prior to the expiration of the 60-day period, interested parties could file comments, petitions to deny or requests for extension of time to file comments or petitions to deny. Although it is our policy that requests for extension of time shall not be granted, and we do not propose to change that policy, we anticipate that the limited resources available to an ITFS party to review a potentially complex two-way service proposal will be a factor considered in whether we grant a request for extension of time. In the alternative, we would consider adopting a 120-day initial comment period, with requests for extensions of time considered only in extraordinary circumstances. We seek comment on these proposals and solicit detailed alternate proposals. We especially seek comment on what time period parties believe would be necessary to adequately review a service proposal without unduly delaying the processing of such a proposal.

24. We believe that the adoption of the one-week initial filing window will lessen the burden on all affected parties, including the Commission's staff, during the first round of application filing. We also believe that providing parties with an initial 60-day period during which they can resolve any apparent conflicts and then amend their applications without prejudice will provide for quicker and easier processing. We believe that issuing a public notice announcing the acceptance for filing of all applications as amended will serve an important notice function for all potentially affected parties. As discussed above, however, we do not propose to accept Petitioners' automatic grant proposal. Rather than adopt Petitioners' proposed automatic grant, we tentatively conclude that, at the end of any comment period that we may adopt and following any further staff review, the Commission staff, pursuant to delegated authority, would issue a grant or denial of any authorization pursuant to the revised rules. If no oppositions have been filed in a particular proceeding and the Commission staff has determined that a service proposal would not cause interference in violation of our Rules, we anticipate that such a grant would be accomplished quickly. We seek comment on both our proposed approach and on Petitioners' proposed automatic grant.

25. We also solicit comment on ways to make information on actual system operating parameters available to third-party applicants who need such information for analysis of the interference environment, and on how to conform our MDS and ITFS rules to provide for amendment of booster station and response station hub applications. Finally, in their Comments, Petitioners urge that we adopt a system whereby an applicant, once authorization for service has been granted, may switch from common carrier to non-common carrier service and back without seeking subsequent authorization. We seek comment on this aspect of Petitioners' proposal, and on whether operators should be required to give the Commission notice when they are switching back and forth between common carrier and non-common carrier service, even if prior approval is not required.

26. *Issues Specific to ITFS.* Under § 74.931 of the Commission's Rules, ITFS stations are operated by

educational organizations and are ''intended primarily to provide a formal educational and cultural development in aural and visual form,'' to students enrolled for credit in accredited secondary schools, colleges and universities. An ITFS licensee who leases excess channel capacity to a wireless cable operator must provide a total average of at least 20 hours per channel per week of ITFS programming on its authorized channels. ITFS licensees in such lease arrangements also retain the right to recapture ''an average of an additional 20 hours per channel per week for simultaneous programming on the number of channels for which it is authorized.'' In addition, an ITFS licensee may shift its required educational programming onto fewer than its authorized number of channels via channel loading or channel mapping. The licensee may further agree to transmission of recapture time on channels not authorized to it but which are included in the wireless cable system of which it is a part.

27. Petitioners propose changes which would revise the absolute 20 hours per channel per week recapture time requirement to provide that the ITFS programming requirements constitute a total of 40 hours per channel per week, including both actual programming and recapture time. The Petition does not contemplate any changes to the required minimum of 20 hours per channel per week of actual ITFS programming. Thus, under the proposed changes, if an ITFS licensee actually provides more than an average of 20 hours per channel per week of ITFS programming, reserved recapture time would only need to make up the difference to achieve a total of 40 hours per channel per week. CTN commented that retaining the 20 hour minimum actual programming requirement is inadequate, and insisted that as digital compression increases the number of channel paths, there must be a proportionate increase in the number of paths available for education, including data services. In their reply, Petitioners claimed that many ITFS licensees are finding it difficult to satisfy the existing ITFS minimum programming requirements. Petitioners further posed that adoption of CTN's proposal would create a disincentive for ITFS licensees to introduce the new technologies contemplated by the Petition. We solicit comment from ITFS licensees on these comments. In the *NPRM,* we find no grounds for retreat from the absolute 20 hour recapture time requirement, especially at this juncture when several wireless cable systems currently enjoy or imminently stand to reap the benefits of increased spectrum capacity through use of digital compression techniques. While we acknowledge the great value to wireless cable operators of maximization of spectrum available for leasing, we also emphasize the primary educational purpose of ITFS and the importance of maintaining sufficient capacity for programming by ITFS licensees which fulfills that purpose.

28. In the *NPRM,* we specifically seek comment on several issues related to the question of whether to change our ITFS programming requirements in light of the use of digital technology by ITFS licensees. Should there be different rules depending on whether the wireless cable system employs digital transmissions? Should a change take the form of an increase in required levels of actual ITFS programming, an increase in ready recapture time, or both? How should any increased requirements be measured, *e.g.*, additional hours or additional paths? With the flexibility in implementation of ITFS programming requirements currently allowed or proposed, such as channel loading and shifting of required programming onto other channels within a wireless cable system, should we retain our existing program content requirements and, if not, how should they be modified? For example, should data transmission count towards minimum ITFS programming requirements? Should voice transmission count? If data and/or voice transmission were to count, how would they be measured with respect to fulfillment of minimum ITFS programming requirements? Should time-of-day requirements be instituted for these uses to help ensure that they are really being put towards ITFS programming? Furthermore, should counting one or both of them have an effect on the amount of actual programming or ready recapture time required? We also invite comment on whether education-related uplink transmissions should be applied towards satisfaction of minimum ITFS programming requirements. While we note our initial impression that counting uplink transmissions will be overly complicated and impractical, given the anticipated multitudes of response stations and the difficulty in predicting or tracking exactly when they are being used for educational purposes, we nonetheless welcome suggestions on how they would be measured with respect to fulfillment of minimum ITFS programming requirements.

29. Petitioners anticipate that system developers will attempt to utilize contiguous 6 MHz channels for two-way services in order to minimize the amount of spectrum that would be lost to the proposed spectral mask whenever a return path is adjacent to a downlink channel. Furthermore, entire ITFS channel groups may need to be devoted for return paths. Thus, Petitioners propose that we allow ITFS licensees to satisfy their programming requirements on other channels within the wireless cable system. This proposal would be the next step in a progression of rule changes, following our allowance of channel mapping and channel loading, that have afforded ITFS licensees increased flexibility in the implementation of their minimum programming requirements. Because this proposal would enhance the two-way scheme, and because it would not call for any dilution or elimination of minimum ITFS programming requirements, we are considering implementing it. The flexibility that the suggested changes would accord to ITFS licensees to lease their channel capacity, along with the maintenance of minimum ITFS programming requirements, could also encourage educators to apply for new ITFS stations and lead to more educational programming. Several commenters put forth ideas for refinements to this proposal. Arizona State Board of Regents, *et al.* (''Arizona'') suggested that each ITFS licensee be required to preserve at least one downstream video channel, and that the Commission institute a procedure whereby it would routinely grant applications by ITFS licensees to exchange individual ITFS channels between channel groups. Instructional Telecommunications Foundation, Inc. (''Foundation'') would require that each ITFS licensee devote at least half of its capacity for downstream use. Schwartz, Woods & Miller (''SWM'') prompted the Commission to facilitate the ''trading'' of channels between the ITFS and MDS bands.

30. Several of the ITFS commenting parties expressed concern that the proposed two-way scheme presents threats to the independence of ITFS licensees and their future ability to use spectrum capacity for instructional purposes. Pace, for instance, cautioned that because the Petition proposes a massive shift towards industry control over ITFS applications, the Commission must ensure that individual ITFS licensees ''do not lose their freedom of choice'' over the use of their channels, through coercion by neighboring licensees or strong wireless cable operators. However, Charlotte-Mecklenburg Public Broadcasting Authority (''CMPBA''), an ITFS licensee, took the view that the proposed rules

adequately protect the interests of ITFS entities, primarily because the rules do not obligate ITFS licensees to take part in the two-way system, enter into a lease agreement, file FCC applications, or accept harmful signal levels. Some of the concerned ITFS commenting parties focused on the effect that the proposed rules may have on the engineering autonomy of ITFS licensees. Arizona posed the question of what would happen if an excess capacity agreement comes to an end, and the ITFS licensee has previously converted its channels to two-way use and has shifted some or all of its programming onto other channels in the wireless cable system. Similarly, CTN asked what the impact of cellularization of a market would be on one or more ITFS licensees within it who elect not to cellularize, as well as whether a single ITFS licensee who strives to cellularize its operations would be dependent on other licensees in the market.

31. In the *NPRM*, we emphasize that cellularization by ITFS licensees would be permissive only, and not mandatory. We particularly seek comment on the effects of allowing complete flexibility in the number of channels ''turned around'' for return paths, and in the shifting of required ITFS programming onto other channels in the wireless cable system and what restrictions, if any, should be adopted. We also seek comment on whether we should require ITFS licensees to retain one or more channels for downstream transmissions and the ramifications of such a requirement. Further, we seek comment on whether ITFS channel swaps should only be just between ITFS channels, or whether ITFS licensees should be able to swap their spectrum for channels in the MDS band. We seek additional comment on specific potential threats to the engineering autonomy of ITFS licensees which could result from institution of the proposed two-way framework; in conjunction with such comment, we further seek proposed solutions. Some proposed solutions include channel swapping and reimbursement of costs of channel changes, upholding that participation of ITFS licensees in cellularization is not mandatory, and potentially increasing reservation of ready recapture time for ITFS programming. Do any of these ideas individually, or a combination of them, provide a sufficient foundation for meeting the expanding needs of some ITFS licensees? Commenters are also encouraged to address the general question of whether the Commission should establish solutions by rule, or whether solutions should be achieved by contract, as advocated by Petitioners.

32. Several commenters also addressed the degree of oversight the Commission should maintain in regulating the wireless cable industry and ITFS. In the past, the Commission has adopted rules and procedures to accommodate and protect the special needs of educational institutions and organizations, believing that educational institutions should be treated differently from commercial entities in many situations due to limited financial and staff resources. In addition, ITFS licensees and applicants are required to file their excess capacity lease agreements, which are reviewed by the staff for overly restrictive provisions affecting the licensee's rights and obligations, and compliance with the Commission's leasing policies.

33. In order to ensure that educators retain control of their facilities and to protect their interests, the Foundation proposed that the Commission require that two-way digital applications and interference consents be reviewed by legal and engineering counsel that do not represent commercial interests, and that these independent advisors ''certify that in their professional opinion the submission will not be harmful to future instructional service.'' We have declined in the past to require all leasing parties to hire separate counsel, finding this ''safeguard'' unnecessary and relying instead on the staff's review and monitoring of leases. We see no reason to change our position on this issue and seek comment on this issue. SWM also proposed that in order to protect the rights of incumbent ITFS licenses, the Commission require that leases approved or submitted under the previous rules ''be amended to make clear that the wireless cable lessee and the ITFS licensee have together considered the rule changes adopted and made any appropriate changes to lease terms, prior to the commencement of commercial operations on the frequencies using cellularization, sectorization or differing channelization plans.'' Petitioners opposed this proposal, stating that the parties to the excess capacity lease agreements, and not the Commission, are best positioned to determine whether proposed system changes require contract revisions. Accordingly, we seek comment on SWM's proposal.

34. We also seek comment on what impact the proposed rule changes would have on our requirements regarding excess capacity lease agreements. For example, the Commission consistently has maintained that an ITFS licensee should be permitted to purchase the ITFS equipment necessary to maintain its operation in the event the lease is terminated. In addition, we also require that the licensee maintain ultimate control over its licensed facilities. Several commenters have expressed concern that given the complexity and cost of Petitioner's proposal, ITFS licensees will be unable to sever their relationship with the wireless cable operator and acquire the equipment to either continue cellular operations or return to non-two-way transmissions. We particularly seek comment on this matter and on what type of equipment MDS lessees of ITFS channels should be required to make available to the ITFS licensees upon termination of a lease. For example, should it only be digital equipment comparable to that in use on the system at the time the lease is terminated or should it be equipment that would make it possible for the ITFS licensee to restore analog video operation, if necessary? Furthermore, with respect to Petitioners' proposal that ITFS licensees be allowed to utilize their entire channel for return paths and shift their ITFS programming to other channels, we request comment on whether the parties should be required to file written agreements governing the ITFS licensee's lease of an ITFS programming channel, and whether our present requirements for excess capacity leases, including those dealing with control issues, length of lease, and rights on termination, should apply.

35. We also revisit our channel loading rules, and propose to retain them. We request that interested parties comment on whether these rules have been beneficial to ITFS licensees and wireless cable operators, or whether they have been detrimental. Because we believe that they have provided additional much-needed flexibility to ITFS licensees and wireless cable operators, any parties commenting that these rules have been detrimental should also focus on solutions to permit the continued application of them while rendering them more universally beneficial. Finally, we also consider issues related to retention of ITFS call sign transmission requirements and accountability of ITFS licensees.

36. In this *NPRM*, we propose to amend our rules to give MDS and ITFS licensees the needed flexibility to fully exploit digital technology in delivering two-way communications services. Growth in the wireless cable industry has remained slow despite the increased channel capacity offered by digital compression and facilitated by the *Digital Declaratory Ruling.* Meanwhile, convergence of different information

delivery systems, including video and Internet access, is occurring in other industries, such as cable and DBS. Thus, one of our primary goals in instituting this proceeding is to enhance the competitiveness of the wireless cable industry. Another of our chief underlying goals in this proceeding is to provide benefits to the educational community through the use of two-way services, such as high speed Internet service. Besides proposing to amend our technical rules to facilitate such usage over ITFS frequencies, we note that the growth of wireless cable has led to the continued development of ITFS by supporting and funding approximately 95 percent of all new ITFS applicants. Thus, we believe that enhancing the competitive viability of wireless cable service through maximization of flexibility and service offerings promotes the underlying educational purpose of ITFS.

37. 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, and 1.1206(a).

38. For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.419. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) at the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

39. *Authority.* This *NPRM* is issued pursuant to authority contained in Sections 4(i) and (j), 301, 303(g) and (r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303(g), 303(r), and 403.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* in MM Docket No. 97–217 (''*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). *See* 5 U.S.C. § 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

Need for, and Objectives of, the Proposed Rules

The Commission is instituting this rulemaking to determine whether, and if so, how, to amend its rules to promote the ability of MDS and ITFS licensees to provide two-way digital services. The objective of this proceeding is to encourage the efficient use of the spectrum allotted to MDS and ITFS by simplifying our current two-way licensing system and providing greater flexibility in the use of the allotted spectrum where such flexibility would best serve the needs of the public. In addition, we intend to enhance the competitiveness of the wireless cable industry and the resultant choices available to consumers, and to increase Internet access for educational institutions and their students via ITFS frequencies.

Legal Basis

Authority for the action proposed in this proceeding may be found in Sections 4(i) and (j), 301, 303(g) and (r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 301, 303(g), 303(r), and 403.

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

The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern.'' [2] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[3] 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.[4]

MDS

The Commission has defined ''small entity'' for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[5] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[6] The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.[7]

MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts.[8] This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, and some of these providers may be impacted by the outcome of this *NPRM.* We seek comment on this tentative conclusion.

ITFS

There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions (these 100 fall in the MDS category, above). Educational institutions may be included in the definition of a small entity.[9] ITFS is a non-pay, non-

[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] 5 U.S.C. § 601(6).

[3] 5 U.S.C. § 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of small business applies unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after an opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes definitions in the **Federal Register**.

[4] Small Business Act, 15 USC § 632.

[5] 47 CFR 21.961(b)(1).

[6] *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–31 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589 (1995), 60 FR 36524 (July 17, 1995).

[7] One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

[8] 13 CFR 121.201.

[9] *See* 5 U.S.C. §§ 601 (3)–(5).

commercial broadcast service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts.[10] However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we tentatively conclude that up to 1932 of these educational institutions are small entities. We seek comment on this conclusion.

Description of Reporting, Recordkeeping and Other Compliance Requirements

The Commission seeks comment on proposals to amend its rules to promote the ability of MDS and ITFS licensees to provide two-way digital services, including implementation of simplified procedures governing application for, and authorization of, booster stations and response station hubs. Because the proposed rule changes would enable licensees to apply for and receive authorizations for new types of booster stations and for response station hubs, certain commensurate new reporting and recordkeeping obligations would follow as part of this process, though the nature of the obligations and the MDS and ITFS rules directly addressing them[11] would remain the same. At the same time, however, the proposed rule changes would make the overall licensing process for two-way digital services much less cumbersome than the current process, which requires individual licensing of each response station and booster station. In the *NPRM*, we request comment on whether we should increase ITFS programming requirements, and if so, in which way and to what degree. While the proposed two-way scheme would result in more complicated interference analysis requirements for MDS and ITFS entities seeking to establish or modify service, regardless of whether the entities themselves choose to engage in fixed two-way transmissions, these interference safeguards are necessary to promote the objectives of this proceeding. We seek comment on these conclusions and how we can modify any proposed new requirements so as to reduce the burden on small entities and still meet the objectives of this proceeding.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

As described in the *NPRM*, in response to a March 31, 1997 *Public Notice* soliciting comment on the Petition, several of the ITFS commenting parties express concern that the proposed two-way scheme presents threats to the independence of ITFS licensees and their future ability to use spectrum capacity for instructional purposes. Pace, for instance, cautions that because the Petition proposes a massive shift towards industry control over ITFS applications, the Commission must ensure that individual ITFS licensees ''do not lose their freedom of choice'' over the use of their channels, through coercion by neighboring licensees or strong wireless cable operators. Other commenting ITFS parties, however, do not perceive such a threat. For instance, CMPBA believes that the proposed rules adequately protect the interests of ITFS entities, primarily because the rules do not obligate ITFS licensees to take part in the two-way system, enter into a lease agreement, file FCC applications, or accept harmful signal levels. Nevertheless, in order to find solutions that would allay the concerns of some ITFS licensees, in the *NPRM* we seek suggestions on ways to provide maximum flexibility in usage of ITFS channels while ensuring that capacity is reserved for downstream ITFS programming, pose the question of whether solutions should be established by rule or by contract and what role the Commission or other third parties should play in reviewing excess capacity lease agreements, and confirm that cellularization by ITFS licensees would be permissive only, and not mandatory.

CTN raises the concern that Petitioners' one-day rolling application filing window plan and automatic grant proposal will create an undue burden on ITFS licensees who may find themselves required to evaluate a continuing stream of applications. We solicit comment on how such a concern could be resolved in the context of a one-day rolling filing window or whether we should retain a periodic filing window system. Furthermore, we tentatively reject the automatic grant component of Petitioners' application processing proposal, and instead propose a ''comment period'' of 60 or 120 days, after which applications would be processed pursuant to current procedures. In proposing the comment period alternative, we acknowledge the complexity of the engineering information in the response hub or booster station applications, and the substantial number of affected parties, particularly ITFS licensees, that frequently have very limited resources and that often would not be able to file a petition against an application before the application is automatically granted. Thus, in the *NPRM*, we particularly solicit comment from small ITFS operators. Similarly, we express concern that the proposed interference prediction methodology is so complex that it may lead to numerous filings updating system configurations, which would present considerable burdens upon existing licensees and operators needing to analyze these filings. We therefore solicit suggestions for other possible prediction methodologies.

In some instances, a proposed rule will impact different classes of small entities in different ways. For instance, in considering whether to increase ITFS programming requirements, including ready recapture time, we acknowledge in the *NPRM* the balance which underlies the existence and substance of the ready recapture provisions of 47 CFR 74.931(e): the great value to wireless cable operators of maximization of spectrum available for leasing, and the importance of maintaining sufficient capacity for programming by ITFS licensees which fulfills the primary educational purpose of ITFS. We decline to retreat from the current recapture time requirements of § 74.931(e), but we solicit comment in the *NPRM* on whether we should adopt any changes to the number of hours required for ready recapture by ITFS licensees.

Other proposals, tentative conclusions, or questions that we pose in the *NPRM* are designed to minimize the impact on all small entities involved. For example, we tentatively reject Caritas' proposal to limit the availability of response channels to MDS channels 1, 2, and 2A, because it would both artificially limit the amount of spectrum that could be used for return paths and unnecessarily prevent ITFS licensees from using their own channels for return paths, while providing no interference protection benefits that cannot be derived in other ways.

CTN and SWM both put forth procedural suggestions for this proceeding. CTN proposes that rather than proceeding with the instant rulemaking, we pursue a negotiated rulemaking procedure and convene a federal advisory committee to evaluate Petitioners' proposals and work out the most effective method to implement them. CTN asserts that this would provide substantial, useful information and facilitate the process initiated by Petitioners. We believe that the instant rulemaking process will provide us with sufficient information to adequately

[10] *See* 13 CFR 121.210 (SIC 4833, 4841, and 4899).

[11] *See, e.g.*, 47 CFR 21.911.

evaluate Petitioners' proposals. In addition, the need for swift consideration of these proposals, in order to enhance the competitiveness of the wireless cable industry and expedite educational institutions' access to the Internet via ITFS frequencies, may be defeated by implementing a potentially lengthy negotiated rulemaking procedure. Thus, we reject CTN's proposal for a negotiated rulemaking at this time. Should circumstances warrant, however, we reserve the option to revisit our decision on this issue at a later date. Conversely, SWM requests the issuance of an NPRM in this proceeding, and noting that many of the parties which filed comments in the initial round of this proceeding are ITFS entities, requests an early Fall comment date in light of the academic schedules which predominate amongst these entities. The comment period that we establish here, therefore, should enhance the ability of ITFS entities to file carefully considered comments and reply comments. We solicit comment in the *NPRM* on other substantive and procedural alternatives to adoption of the proposed two-way digital transmission scheme.

Federal Rules that Overlap, Duplicate or Conflict With the Proposed Rule

None.

List of Subjects

47 CFR Part 1

Environmental impact statements

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Education, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29346 Filed 11–5–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 96–128; DA 97–2162]

Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for waiver.

SUMMARY: On October 7, 1997, the Common Carrier Bureau granted, on its own motion, a limited waiver of five months, until March 9, 1998, to those local exchange carriers and payphone service providers that cannot provide payphone-specific digits as required by orders in this proceeding. This limited waiver applied to the requirement that local exchange carriers provide payphone-specific coding digits to payphone service providers, and that payphone service providers provide coding digits from their payphones before they can receive per-call compensation from interexchange carriers for subscriber 800 and access code calls, and 0+ and inmate calls. The limited waiver recognized that three parties had filed petitions for waiver of the payphone-specific coding digit requirements.

EFFECTIVE DATE: October 7, 1997.

FOR FURTHER INFORMATION CONTACT: Rose Crellin or Greg Lipscomb, Formal Complaints and Information Branch, Enforcement Division, Common Carrier Bureau. (202) 418–0960.

SUPPLEMENTARY INFORMATION: A toll-free call transmitted by a local exchange carrier (LEC) to an interexchange carrier (IXC) carries with it billing information codes, called automatic number identification (ANI), supplied by the LEC that assist the IXC in properly billing the call. Currently, however, not all payphone calls carry the payphone-specific coding digits necessary to identify the calls as payphone calls, making per-call tracking and blocking more difficult.

In the *Payphone Orders*,[1] we imposed a requirement that LECs provide payphone-specific coding digits to payphone service providers (PSPs), and that PSPs provide those digits from their payphones before the PSPs can receive per-call compensation from IXCs for subscriber 800 and access code calls.[2] In the *Order on Reconsideration,* we clarified that, to be eligible for per-call compensation beginning October 7, 1997, payphones are required to transmit specific payphone coding digits as a part of their ANI, which will assist in identifying payphones to compensation payers.[3] Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line.[4] We also clarified that by October 7, 1997, LECs must make available to PSPs, on a tariffed basis, such coding digits as a part of the ANI for each payphone.

We have received three requests for a waiver of the payphone-specific coding digit requirements.[5] Meanwhile, we have granted, on our own motion, pursuant to § 1.3 of our rules, a limited waiver, until March 9, 1998, of the payphone-specific coding requirement for those LECs and PSPs not yet able to provide transmission of such digits. Those LECs and PSPs that are able to transmit the required coding digits by October 7, 1997, remain obligated to do so. Similarly, the remaining LECs and PSPs are obligated to transmit the required coding digits as soon as they are technically capable, but in any event no later than March 9, 1998.

During the period between October 7, 1997, and March 9, 1998, payphones appearing on the LEC-provided lists of payphones will be eligible for per-call compensation even if they do not transmit payphone-specific codes. This waiver of the requirements applicable to LECs and PSPs will provide LECs, IXCs, and PSPs with additional time that the record indicates is necessary to implement the procedures needed to transmit payphone-specific coding digits, without further delaying the payment of per-call compensation required by section 276 of the Act.[6]

[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–128, Report and Order, 61 FR 52307 (October 7, 1996), 11 FCC Rcd 20,541 (1996), (''*Report and Order*''); Order on Reconsideration, 61 FR 65341 (December 12, 1996), 11 FCC Rcd 21,233 (1996)(''*Order on Reconsideration*'') (together the ''*Payphone Orders*'').

[2] *See Report and Order*, 11 FCC Rcd at 20,591, paras. 98–99; *Order on Reconsideration,* 11 FCC Rcd at 21265–66, para. 64, and 21,278–80, paras. 93–99.

[3] *See Order on Reconsideration*, 11 FCC Rcd at 21265–66, para. 64, and 21,278–80, paras. 93–99.

[4] *See id.*

[5] Requests were received from the United States Telephone Association (USTA), the LEC ANI Coalition and TDS Communications Corporation. Those petitions have been placed on public notice for comments. *See* DA 97–2214, Pleading Cycle Established for Petitions to Waive Payphone Coding Digits Requirements, October 20, 1997.

[6] This waiver does not change the obligations of LECs pursuant to our requirements in *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Third Report and Order,* CC Docket No. 91–35, 61 FR 26466 (May 28, 1996), 11 FCC Rcd 17,021 (1996).

We also include LECs that have non-equal-access switches in the general coverage of this waiver. We do not address in this order the special problems presented by non-equal-access switches that were raised in the USTA Petition.[7] We will be addressing in a separate order the issues raised by parties regarding the provision of payphone-specific coding digits by non-equal-access switches.

This waiver is effective immediately in order to ensure that all PSPs receive per-call compensation effective October 7, 1997, as required by the *Payphones Orders.*

This waiver is appropriate because special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.[8] The special circumstances are that transmission of payphone-specific coding digits is not yet ready for implementation for certain payphones. The industry is, however, working on an expeditious resolution of this situation. The public interest is served by this waiver because it allows the Commission to move forward in implementing the statutory requirement[9] that PSPs receive fair compensation for calls placed from their payphones. Refusal to waive this requirement would lead to the inequitable result that many payphone providers, particularly independent providers who do not control the network modifications necessary to permit payphone-specific coding digits to be transmitted, would be denied any compensation while implementation issues are being resolved by the industry. This limited waiver, moreover, will not significantly harm any parties. The unavailability of these coding digits, for instance, will not preclude IXCs from identifying payphone calls for the purpose of determining the number of calls for which compensation is owned. Nor will the waiver interefere with the possibly sixty percent of payphones that currently are able to transmit payphone-specific coding digits.

Accordingly, pursuant to authority contained in sections 1, 4, 201–205, 218, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 218, 226, and 276, and §§ 0.91, 0.291 and 1.3 of the Commission's rules, 47 CFR 0.91, 0.291 and 1.3, *it is ordered* on the Commission's own motion that the time before payphone-specific coding digits are required for per-call compensation is extended until March 9, 1998, to the extent described herein.

It is further ordered that this order is effective upon release thereof, and that the waiver included in this order is effective October 7, 1997.

List of Subjects in 47 CFR Part 64

Communications common carriers, Operator service access, Payphone compensation, Telephone.

Federal Communications Commission.

A. Richard Metzger, Jr.,

Acting Chief, Common Carrier Bureau.

[FR Doc. 97–29305 Filed 11–5–97; 8:45 am]

BILLING CODE 6712–01–P

[7] USTA Petition at 9, 11.

[8] *WAIT Radio* v. *FCC,* 418 F.2d 1153, 1159 (D.C. Cir. 1969).

[9] 47 U.S.C. 276(b)(A).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 385

[FHWA Docket Nos. MC–94–22 and MC–96–18; FHWA–97–2252]

RIN 2125–AC 71

Safety Fitness Procedure; Safety Ratings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document incorporates a Safety Fitness Rating Methodology (SFRM) as an appendix to the Motor Carrier Safety Fitness Procedures regulations. The SFRM will be used to measure the safety fitness of motor carriers against the safety fitness standard contained in 49 CFR Part 385. By this action the FHWA will supersede the interim final rule promulgated on May 28, 1997, effective May 28, 1997 until November 28, 1997 (62 FR 28807). That rule incorporated an SFRM to calculate the safety fitness of motor carriers transporting hazardous materials in quantities for which vehicle placarding is required, or transporting 15 or more passengers including the driver. The rule also includes a procedure which provides a notice period of 45 days during which a proposed rating can be challenged before it becomes effective.

DATES: The effective date of this regulation is November 28,1997.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Hill, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Introduction

The FHWA is taking this action largely in response to a finding of the District of Columbia Circuit Court of Appeals, *infra.* This final rule is required to meet the FHWA's responsibility to maintain a system to determine the safety fitness of motor carriers operating in interstate commerce, but the agency is considering other means to achieve that goal.

Some commenters to this docket argued that a performance-based system modeled on SafeStat would be fair, and perhaps preferable to the system proposed in the FHWA's May 28 NPRM, *infra,* but that improvements are needed in the generation and use of data.

The FHWA's goal is to create a more performance-based means of determining when carriers are not fit to conduct commercial motor vehicle (CMV) operations safely in interstate commerce. A future rating system using a pass-fail test is conceivable. The FHWA will publish an advanced notice of proposed rulemaking shortly in the **Federal Register** requesting comments and supporting data on the future of a rating system that can be used both in making safety fitness determinations and in meeting the demands of shippers, insurers and other present and potential users interested in evaluating motor carrier performance.

Background

The U.S. Court of Appeals for the District of Columbia Circuit ruled on March 19, 1997, that the FHWA's procedures for assigning safety ratings were adopted contrary to law. *MST Express and Truckers United for Safety* v. *Department of Transportation and Federal Highway Administration,* 108 F.3d 401 (D.C. Cir. 1997). The court found the FHWA had failed to carry out its statutory obligation to establish, by regulation, a means of determining whether a motor carrier has complied with the safety fitness requirements of the Motor Carrier Safety Act of 1984 (MCSA) (codified at 49 U.S.C. 31144) because the SFRM had not been adopted pursuant to notice and comment rulemaking, as 49 U.S.C. 31144(a) requires. The safety rating of MST Express was determined using the SFRM, and the petitioner's *conditional* safety rating was therefore vacated and the matter remanded to the FHWA ''for such further action as it may wish to take, consistent with the decision.''

In response to the court's decision the FHWA issued an interim final rule (62 FR 28807) effective May 28, 1997, adopting the challenged SFRM but only to rate motor carriers transporting hazardous materials or passengers pending the development of a permanent rule. This step was necessary in order to enable the agency to comply with the mandate of the MCSA of 1990 (49 U.S.C. 5113), which requires that passenger and hazardous materials carriers cease operations within 45 days of being rated *unsatisfactory*.

In a notice of proposed rulemaking (NPRM) (62 FR 28826), also published on May 28, 1997, the FHWA proposed to modify the SFRM, incorporate it as Appendix B to Part 385, and use it in the process of deciding whether all motor carriers meet the safety fitness requirements.

The FHWA had been using an SFRM, comprised of six rating factors, since October 1, 1989, as the mechanism for calculating how well motor carriers adhere to 49 CFR 385.5, Safety fitness standard. In addition to making the detailed explanation of the SFRM publicly available since August 16, 1991, the FHWA issued notices seeking comments from the public in FHWA Docket Nos. MC–91–8 and MC–94–22.

In the first docket, the FHWA solicited public comment on an interim final rule (56 FR 40801) (August 16, 1991) implementing the provision of the MCSA of 1990 prohibiting a motor carrier with an *unsatisfactory* safety rating from operating CMVs to transport: (1) Hazardous materials in quantities for which vehicle placarding is required, or (2) more than 15 passengers including the driver. This prohibition becomes effective after 45 days have elapsed following receipt of an *unsatisfactory* safety rating issued by the FHWA. During the 45-day period, the motor carrier should take such action as may be necessary to improve its safety rating to *conditional* or *satisfactory* or be subject to the prohibition. Fourteen comments were received in response to the 1991 interim final rule, and those which provided information relevant to the May 28, 1997, NPRM were discussed in that document.

In the second docket, initiated by a notice published in the **Federal Register** on September 14, 1994 (59 FR 47203), the FHWA requested comments on changes made to the SFRM in 1993. Additional changes to the SFRM, which were to become effective on October 1, 1994, were also explained and comments were invited. These changes initiated the use of violations of the safety regulations designated as ''acute'' or ''critical'' to rate each of the five regulatory factors evaluated when performing a compliance review (CR) at a carrier's place of business.

The FHWA also solicited comments concerning: (1) The direction that future modifications to the SFRM should take, and (2) how best to disseminate information to the industry about new regulations and the FHWA programs that encourage ''voluntary compliance.''

The 17 comments received in response to the second docket were discussed in the May 28, 1997, NPRM to the extent they provided relevant information.

On April 29, 1996, the FHWA proposed to reorganize and revise its procedural rules, including those related to the assignment of ratings (61 FR 18866). Among the revisions proposed was a procedure for the issuance of a notice of proposed rating which provided a 45-day period within which a motor carrier could challenge a proposed rating before it became effective. The procedure also provided relief from an adverse rating to carriers that were willing to make credible, effective and verifiable commitments to improved management and performance.

Discussion of Comments

Thirty two comments were received in response to the May 28, 1997, interim final rule (62 FR 28807) and NPRM (62 FR 28826). Only a few of the 125 comments received in response to the April 29, 1996 NPRM on procedural rules addressed the notice of proposed rating provision.

Purpose of Safety Ratings

The Transportation Lawyers Association (TLA) suggested that the FHWA undertake a thorough evaluation of its entire program by first recognizing that the current rating system serves two purposes, information (i.e., the rating) and enforcement. It recommended the FHWA separate the rating from enforcement as it believes that combining them is unworkable.

The American Trucking Associations (ATA) stated that the current SFRM is based on the premise that a lack of ''safety management controls'' is indicative of an unsafe carrier, yet it does not believe the FHWA has demonstrated that a lack of compliance will cause a carrier to be unsafe.

The safety rating provides information, both to the rated carrier and anyone else inquiring about the rating, concerning the degree of adherence by the motor carrier to the Part 385 safety fitness standard. Enforcement is an aspect of the rating only in the sense that a motor carrier with an *unsatisfactory* rating is prohibited from transporting hazardous materials requiring placarding or 15 or more passengers including the driver. Congress, however, mandated this result by enacting the prohibition against transportation by such carriers in the MCSA of 1990. The FHWA, moreover, believes that sufficient data exists to conclude that motor carriers with inadequate safety management controls, i.e., less than *satisfactory* compliance with the safety fitness standard, are more likely to have higher accident rates. In addition, the FHWA has commissioned research by the Volpe National Transportation Systems Center, part of the Research and Special Programs Administration, to assess the performance of the CR program through the development of an Impact Assessment Model. Preliminary indications are that CR activity, due to its educational, safety awareness and sanction aspects, has substantial crash reduction benefits.

Accident Factor

The National Tank Truck Carriers (NTTC), Rocor Transportation (RT), Truckload Carriers Association (TCA), American Movers Conference (AMC), the ATA, Oregon Department of Transportation, Motor Carrier Transportation Branch (ODOT/MCTB), and Ryder System, Inc. (RS) supported the proposal to adopt a recordable accident rate for the accident factor of the SFRM. The Advocates for Highway and Auto Safety (AHAS) questioned the statement in the NPRM that ''The data indicate that the vast majority of all accidents have been determined to be preventable.''

Santee Carriers (SC) , Vertex Chemical Corporation (VC), and the Owner Operator Independent Drivers Association, Inc. (OOIDA) wanted to retain the recordable preventable accident criteria for the accident factor, as this would measure accidents within the carrier's control, and OOIDA would like the ''preventability'' determination made more objective. The TCA stated that the FHWA has yet to define the criteria to be used in determining preventability.

The Association of Waste Hazardous Materials Transporters (AWHMT), Distribution & LTL Carrier Association (DLCA), the VC, Petroleum Marketers Association of America (PMAA) and the ATA recommended determining accident rates on a multi-year basis. They believe a multi-year standard is more reflective of the average accident rate. The TCA and the NPTC recommended that there be a midpoint between accident rates of 1.6 and 2.1 to

define an *unsatisfactory* rating in the accident factor for carriers with some specified significant portion, though not all, of their mileage in urban areas.

The TCA, the AMC, Agricultural Transporters Conference (ATC), California Highway Patrol (CHP) and the RS recommended adopting different accident rates for particular industry segments and types of operations. The PMAA believes that the proposed 2.1 accident rate is unfair for its short haul carriers because most of their mileage occurs in heavy traffic environments. A similar concern was expressed by the VC and the OOIDA.

The RI and the NPTC opposed removing the *conditional* level in the accident factor rating. The AHAS opposed a single tier rating for the accident factor as motor carriers not assigned an *unsatisfactory* factor rating could not be distinguished from unrated carriers. They also opposed continuation of the exception for carriers with less than 20 drivers (these carriers could not be rated less than *conditional* for the accident factor) as they believe some of these carriers could have very high accident rates.

The DLCA, the TCA, the AWMT, the VC, the NADA, the ATA, New Mexico Motor Carrier's Association (NMMCA), and the CHP wanted the FHWA to use only ''at fault'' accidents, those determined by law enforcement officers to be the fault of the CMV driver or those otherwise clearly attributable to the fault of the CMV driver or carrier, for rating the accident factor.

The NPTC, the ATA and the AHAS questioned whether doubling the national average is appropriate, as poor mileage information undermines accurate calculation of accident rates. The NPTC stated that the FHWA presented no statistical data for doubling the accident rate, and that a more appropriate reference would be the median accident rate.

The FHWA has carefully considered all of the comments and for the following reasons believes it is reasonable to use the recordable accident rate for evaluating the accident factor. The data from Fiscal Years 1994, 1995 and 1996 in Recordable Rate (RR) and Recordable Preventable Rate (RPR) is as follows: 1994: RR=.804; RPR=.553; 1995: RR=.724; RPR=.528; 1996: RR=.713; RPR=.503. The FHWA has increasingly focused CRs on carriers most likely to have accidents, thus, the rates for reviewed carriers are higher than the rates would be for all carriers subject to the Federal Motor Carrier Safety Regulations (FMCSRs). The recordable accident rates used were taken from all CRs performed in Fiscal Years 1994, 1995 and 1996, which addresses the concern that the average accident rate should be on a multi-year basis. The average recordable rate was .747, and the average recordable rate for carriers operating entirely within a 100 air mile radius was .839 per million miles. Recent analysis of accident rates for all carriers showed only small differences in rates by fleet size, and the differential between recordable and recordable preventable accidents was consistent by fleet size. The FHWA will rate the accident factor only when a carrier has two or more accidents in the 12 months prior to the CR. A single accident could easily place a small carrier, or a larger carrier operating very few miles, over the threshold for the *unsatisfactory* factor rating, which is not a reliable outcome. By using only the *unsatisfactory* rating the FHWA believes it is sending a message that any accident is unacceptable; however, only those carriers that are over the threshold will be identified in the factor rating. A motor carrier with an accident rate twice the average rate for all similarly situated carriers is most likely to have inadequate or improperly functioning safety management controls.

An urban carrier (a carrier operating entirely within the 100 air mile radius) with a recordable accident rate over 1.7 (approximately twice the 1994–96 average of .839) will receive an *unsatisfactory* factor rating. All other carriers with a recordable accident rate greater than 1.5 (approximately double the 1994–96 average of .747) will receive an *unsatisfactory* factor rating.

The FHWA stated in the NPRM, ''If a driver, who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.'' The FHWA reviewed the data relative to the statement in the NPRM that ''the *vast* majority of all accidents have been determined to be preventable.'' The statement should have said simply that the *majority* of all accidents are preventable, as approximately two thirds of recordable accidents are preventable.

The SFRM is the means by which the FHWA calculates a motor carrier's adherence to the § 385.5 safety fitness standard. As it is a method and not an absolute criterion, the FHWA will continue to consider non-preventability of accidents when a motor carrier contests a rating by presenting compelling evidence that the recordable rate, as applied to its particular circumstances, is not a fair means of evaluating its accident factor. An example would be a motor carrier that had two recordable accidents in the 12 months prior to the CR and in both accidents its' CMVs were rear-ended when stopped for a signal light. The FHWA believes there will be relatively few instances where a motor carrier will be able to avail itself of the non-preventability defense to an adverse rating based on the accident factor. Retaining the non-preventability exception provides motor carriers the ability to present information that their accident factor should undergo a second-level evaluation. Adopting the 45-day notice of proposed rating procedure will allow for such second-level review in a meaningful manner.

The FHWA is continuing to evaluate the possibility of setting different accident-rate thresholds for different types of transportation, extending the urban carrier threshold to carriers that are not exclusively urban, and establishing a different threshold for an *unsatisfactory* accident factor rating for carriers with very few accidents, as opposed to those with many accidents. No such changes are included in this final rule, however.

The FHWA will continue to examine the accident data in the Motor Carrier Management Information System (MCMIS) as a means to evaluate all carriers' accident rates. This source of information is increasingly reliable. The states and their subdivisions have uploaded their accident data more timely and accurately with each year since the National Governors Association accident reporting system was inaugurated in 1992.

Objectivity of Ratings

The DLCA and the ATA argued that there is too much variance by regions in the rating process. Further, the ATA stated that CRs must be performed uniformly throughout the country, and the ''findings of the CR must accurately reflect the overall safety posture of the motor carrier.'' It also commented that ''the CR and rating processes should not be overly influenced by the attitude of individual investigators and the results should not be different depending on a motor carrier's geographical location.''

The FHWA believes that, having modified the SFRM to rate motor carriers on the basis of actual violations of ''acute'' regulations and patterns of violations of ''critical'' regulations and to measure performance by recordable accidents and vehicle out-of-service (OOS) rates from roadside driver/vehicle inspections, the safety rating process has been made more objective. The regulations identified as ''acute''

and ''critical'' enable the motor carriers with adequate safety management controls to direct their initial compliance efforts toward these regulations. There should not be a pattern, i.e., a 10 percent violation rate, of 'critical' regulations by motor carriers exercising due diligence in their efforts to comply with the regulations. The FHWA continues to work toward making the CR process as fair and as uniform as possible. The agency believes that an important aspect of national uniformity in the performance of CRs is the review of a relatively constant number of vehicles, drivers, and records which varies with the number of vehicles and drivers performing transportation for the carrier. The minimum number of vehicles, drivers, and records to review is derived from a sampling chart, which provides guidance to the individual performing the CR. It is relevant that motor carriers are required to comply with all applicable FMCSRs and Hazardous Materials Regulations (HMRs). Thus, to perform a CR based on a random sample of a carrier's drivers, vehicles and records would be counter-productive in determining if the carrier was complying with regulatory requirements and meeting the Safety fitness standard in § 385.5.

''Acute'' and ''Critical'' Regulations

The AHAS and the AWHMT believe that the FHWA has not explained why regulations are categorized as ''acute'' or ''critical.'' The AWHMT questioned the designation of certain regulations as ''critical'' and argued that they should be ''acute'' regulations. The AWHMT also wanted to know the FHWA's rationale for the ''10 percent threshold when assessing points to carriers for a pattern of violations of a ''critical'' regulation,'' and also asked what is meant by ''large numbers'' concerning the pattern of violations when ''critical'' regulations were discussed. The AHAS is concerned with FHWA's comment that ''even a carrier with effective safety management controls will likely violate some of the 'critical' regulations.'' The AHAS also wanted violations of ''acute'' regulations to be cited even when the motor carrier did not have knowledge or could not reasonably be expected to have knowledge of the violation.

The FHWA has categorized certain regulations as ''acute'' or ''critical'' based on the experience of the Federal field staff and State enforcement officials. As the terms imply, such regulations have a potential or actual impact on operational safety, and a carrier's compliance with them is a direct indication of its ability effectively to manage the complex operations needed to make it a responsible user of the public highways. The FHWA believes that even motor carriers with effective safety management controls may incur some violations of ''critical'' regulations, notwithstanding systematic review of their compliance with the regulations. This is so because of the necessity for remote and often post hoc monitoring by a safety manager. A motor carrier that reviews drivers records of duty status (RODS) and discovers three instances out of 100 RODS reviewed where drivers exceeded the 10-hour driving limitation in § 395.3(a)(1), may take appropriate actions to discipline the drivers, but the violations have still occurred. The carrier is not in total compliance, but the 97 instances where compliance was found indicates the carrier's safety management controls are effective. A violation rate over the ''10 percent threshold'' is used as an indication that a pattern of noncompliance is detectable and tolerated.

The FHWA has reviewed the reference in the SFRM to ''large numbers of documents'' found in (62 FR 28832). The agency was attempting to convey the principle that a pattern of violations is more than an isolated instance of noncompliance. There was no intent to imply a specific number of documents. To clarify its intent the sentence now reads: ''When a number of documents are reviewed, the number of violations required to meet a pattern is equal to at least 10 percent of those examined.'' The preceding sentence remains ''A pattern is more than one violation.'' Concerning the AHAS recommendation that the FHWA should cite the carrier for all violations of ''acute '' regulations, the FHWA believes its proposed policy was and is correct. Violations of ''acute'' regulations will not be cited on the CR or used in the SFRM if, under the circumstances, the carrier did not know, and could not reasonably be expected to have known, of a violation that the driver deliberately concealed from the carrier. Because of the nature of ''acute'' regulations, however, such omissions are expected to be rare.

Vehicle Factor

The AWHMT wanted to know if the FHWA plans to adjust the 34 percent OOS rate for the vehicle factor. The NTTC, the TCA and the AMC recommended that the FHWA consider not assigning any weight to OOS violations in the vehicle factor until the NTTC's petition to incorporate into the FMCSRs the current OOS criteria published by the Commercial Vehicle Safety Alliance and maintained in concert with the FHWA, is finally disposed of. One association noted that good roadside inspections are often not documented. Rocor Transportation found the current criteria for the vehicle factor acceptable.

The FHWA will continue to rate the vehicle factor as proposed in the NPRM as it believes this is an appropriately objective way to evaluate the carrier's performance. Whether the OOS criteria should be incorporated into the FMCSRs is an issue unrelated to the validity of those criteria as a measure of vehicle safety. The OOS criteria are essentially enforcement tolerances, as § 396.3(a)(1) requires that parts and accessories be in safe and proper operating condition at all times.

The 34 percent OOS rate is the first indicator in evaluating the vehicle factor when a motor carrier has three or more roadside inspections in the 12 months prior to the review, or three vehicles inspected at the time of the CR, or a combination of the two. If the OOS rate is 34 percent or greater, the initial factor rating is conditional. The reason for the three inspections is that the agency wanted the vehicle OOS rates to be an aspect of the factor rating for as many carriers as possible, but did not want one OOS vehicle inspection to impact the factor rating. The vehicle OOS rate for Level I (full) inspections has been between 27.9 percent and 36.2 percent for the last five fiscal years. Generally, roadside inspections are not random. Vehicles that appear to have defects are sometimes selected from the traffic stream at scales, or vehicles of carriers that have no or few inspections in the MCMIS are selected for inspection. Therefore, the average OOS rate based on selected sampling is approximately one-third of the vehicles inspected. The FHWA believes setting the rate at 34 per cent for the initial factor rating of conditional is appropriate, as a carrier with only one vehicle out of three inspected placed OOS will not have the factor rating affected. The FHWA is aware that some vehicles receive a cursory inspection at a scale facility, which does not produce an inspection report when no defects are discovered. The FHWA will consider adjusting the 34 percent first indicator should there be a significant change in the Level I vehicle OOS rate.

The second indicator in the vehicle factor is the compliance with the Part 396 regulatory requirements. If noncompliance with an ''acute'' regulation or a pattern of noncompliance with a ''critical'' regulation is discovered, the initial

conditional factor rating will be lowered to unsatisfactory.

For carriers with fewer than three inspections in the 12 months prior to the CR, or three vehicles inspected at the time of the review, or a combination of the two totaling three, the vehicle factor will be evaluated on the basis of compliance with ''acute'' and ''critical'' regulations. This is the same method for evaluating the other regulatory factors.

Selection of Records for Review

A number of the commenters reiterated that the FHWA should sample records randomly for safety rating purposes, although they agreed that targeted selection of records is appropriate for enforcement purposes. They cited studies of the way the FHWA selects records for CRs, and concluded that the selection method ''does not yield a representative picture of the state of the carrier's safety record.'' They suggest that for rating purposes the information should be generated by a review in which motor carrier records would be examined on a purely random basis, according to generally accepted statistical practices, in order to present a fair picture of the carrier's safety compliance in a broad context. One commenter believes this will remove some of the alleged subjectivity from the current system. Another commenter suggests the FHWA go beyond a random sample requirement for CRs and give the carrier the option of substituting a 100 percent universal sample, probably in the form of electronic records.

One commenter quoted a recent memorandum from OMC's Office of Field Operations to the Regional Directors which indicates that ''all references to the 'International Standard of Sampling' have been removed from the *Field Operations Manual*.'' The commenter's concern was that this action ''is inconsistent with both the interim final rule and the notice of proposed rulemaking,'' which indicated that the FHWA currently uses and proposes this standard.

The International Brotherhood of Teamsters (IBT) noted that the May 28,1997, NPRM did address the sampling issues, and it found the reasons supporting the current sampling methodology persuasive. The IBT also stated that the proper objective is to focus scarce enforcement resources where the problems are most likely to occur.

The FHWA has carefully considered these comments and believes it is in the best interest of public safety to continue to focus its limited resources on drivers and vehicles most likely to be in violation of the regulations. The overall safety posture of the motor carrier is not being measured during the CR, rather the ''adequacy of the carrier's safety management controls'' is being assessed pursuant to § 385.5. The references to the International Standard of Sampling have been removed from the *Field Operations Training Manual*, as the FHWA is making it very clear that the sampling chart, which has not been changed, is intended only for purposes of determining the minimum number of records to be reviewed, depending on the size of the carrier. The agency does not want to give the false impression that full-scale random sampling procedures are being used. Motor carriers are equally able to use the same indicators the FHWA uses when the carriers are monitoring the performance of their drivers and vehicles to assure compliance with the FMCSRs and HMRs. It is important to note that a *satisfactory* safety rating is only a passing grade and that full compliance with all of the safety regulations should be the objective of every carrier and every driver. It is also the best way to avoid a rating with adverse consequences to the carrier's operations.

Opportunity To Challenge a Rating

A registered practitioner and regulatory analyst recommended that there should be a procedure to enable a motor carrier that challenges a safety rating to obtain a stay of the effectiveness of that rating until the challenge has been heard and decided. The TLA recommended that the carrier have a means of correcting inaccurate information before the safety rating is issued. These recommendations are consistent with proposals made in response to the April 29,1996, NPRM to amend the FHWA's rules of practice for motor carrier proceedings. The NPRM proposed that motor carriers receive a ''Notice of Proposed Rating'' before a safety rating was issued (61 FR 18866,18884). The comments overwhelmingly supported that proposal.

One State enforcement agency argued that, ''in the interest of the traveling public,'' the 45-day grace period for passenger and hazardous material carriers that receive an *unsatisfactory* safety rating should be waived and the rating should become effective immediately. The MCSA of 1990 requires that motor carriers be afforded 45 days after receipt of an *unsatisfactory* safety rating before the prohibition against transportation becomes effective. The National Automobile Dealers Association (NADA) was satisfied that carriers are afforded reasonable due process. The AHAS strenuously opposed the suppression of the rating results during the 45-day challenge period, which, of course, would defeat the purpose of the provision, i.e., to afford the opportunity to be heard before a potentially damaging judgment is rendered.

The FHWA has considered these comments and is amending § 385.11, Notification of a safety rating, to incorporate a notice-of-rating procedure for all less than satisfactory ratings. A proposed safety rating of unsatisfactory or conditional will become the final rating 45 days after the date the notice of proposed safety rating is received by the motor carrier, unless the carrier petitions for a review and the petition is granted. The proposed-rating procedure parallels the requirement in the MCSA of 1990 that a motor carrier receiving an unsatisfactory safety rating be given 45 days to improve its rating before the ban on the transportation of hazardous materials and passengers takes effect. It eliminates a distinction between carriers based on type of operation by giving advance notice of the proposed adverse rating in all cases. This will afford all carriers the opportunity to be heard during that period before consequences attach. This provision was published for notice and comment on April 29, 1996 (61 FR 18866, 18884) and was welcomed by virtually all of those who commented on it. Under the circumstances, the agency believes that a supplemental notice of proposed rulemaking to republish the proposal under this docket would be superfluous and is therefore unnecessary under the Administrative Procedure Act.

As a result of amending § 385.11, related sections in Part 385 were also revised to incorporate those changes.

Point Assessment for Violations of ''Acute'' and ''Critical'' Regulations

One commenter wanted all of the factor 3 (Hours of Service) ''critical' regulations to be aggregated to meet the 10 percent pattern definition when violations are discovered. For example, violations of the 10-hour rule and the 70-hour rule would be treated as part of the same pattern. Another commenter agreed with the higher weighting of patterns of factor 3 ''critical'' regulations. Another commenter stated that the motor carrier should not be penalized for willful hours of service violations by its drivers.

A number of commenters argued that patterns of violations of ''critical'' hours of service regulations should not be assessed two points, as they did not believe existing research establishes a causal relationship between those

violations and accidents. Another commenter stated that the current policy of two points for hours of service violations is one of ''absolute liability for hours of service violations'' and is irrational.

The ODOT/MCTB stated that although ''recent studies indicate time of day and the amount and quality of rest may be more critical factors than driving hours, and we are still obligated to enforce the current regulation to ensure an optimum level of performance.'' The commenter does not believe that doubling the points for factor 3 is appropriate unless there is a violation of cumulative on-duty time and falsification of records for the purpose of concealing excessive on-duty time. The ATA noted that several fatigue related studies which were placed in the docket as supplemental information, show that there is no simple way to measure fatigue. This is further evidence, the ATA wrote, that the connection between hours of service violations, fatigue and accidents is extremely complex and not fully understood. Thus, the ATA believes it would be inappropriate to give twice the weight to hours of service violations. The IBT agreed with the FHWA's proposal to retain a higher weighting factor for violations of Part 395 ''critical'' regulations.

After careful consideration of the comments, the FHWA remains convinced that the current regulations do have an impact in preventing the risks of driver fatigue and that they must be enforced until new regulations are developed. There have not been any studies that have discounted time on task as a significant contributor to fatigue. The observations of the ODOT/MCTB and the ATA about the complexity of the connection between hours of service violations, fatigue, and accidents, do not provide a rational basis for rulemaking changes. Moreover, there are no ''acute'' regulations in Part 395 (Hours of Service). Thus, to have a rating of less than satisfactory in factor 3, a motor carrier must have demonstrated a pattern of noncompliance with a ''critical'' regulation. The FHWA believes that motor carriers with effective safety management controls should be able to maintain a noncompliance rate of less than 10 percent for any of the Part 395 ''critical'' regulations. Therefore, until the ongoing rulemaking efforts to better regulate fatigue are concluded, the FHWA believes it is important to continue to assign two points for a pattern of violations of a Part 395 ''critical'' regulation.

Rating Factors

One commenter suggested that the accident factor have more weight than the other factors. Another commenter believes that until research is conclusive that one factor has a more significant impact on safety compared to the others, equal weight should be given to each factor. This difference in the commenters' responses is indicative of the problem the FHWA faces. While an accident is unquestionably a more serious event than any particular regulatory violation, there is good reason to believe that regulatory violations are causally related to accidents. The 1988 workgroup which developed the six factors in the SFRM was unable to determine that any of the six factors was more important to safety fitness than any other, and each factor was therefore given equal weight. (Although the Operations factor includes a double-weighting of patterns of violations of Part 395 ''critical'' regulations, a pattern requires that at least ten percent of the records of duty reviewed be in violation. During virtually all CRs a minimum of at least one hundred fifty RODS are reviewed for compliance with Part 395 ''critical'' regulations. Carriers with adequate safety management controls will be able to keep the rate of noncompliance under ten percent for any of these ''critical'' regulations. The only regulatory control on fatigue is the current hours of service requirements. The fact that a ''pattern'' of violations cannot occur unless at least ten percent of the RODS checked fail to comply with the regulations; that Part 395 includes no ''acute'' regulations; and that at least 150 RODS are typically reviewed, virtually eliminating the possibility of statistical accidents—all of these tend to balance the double weighting of patterns of violations of Part 395, resulting in a factor with roughly the same weight as any other. In the absence of clear evidence that one or more of the rating factors has a greater impact on safety or is a better index of the carrier's safety management controls, the FHWA has concluded that it must continue to place equal weight on each of the factors.

Safety Profiles

A number of the commenters were concerned about the accuracy of the information in the carrier profiles. Two commenters wanted the carrier to be presented in advance of the CR with ''a record of violations upon which an auditor intends to rely, so that the carrier has an opportunity to protect and defend its record and identify any inaccuracies before its safety performance is judged.'' They also were concerned about the timeliness of the data and wanted stale violations removed from the carrier's record. Two commenters suggested that carriers be provided a continuing opportunity to challenge the accuracy of the entries in their carrier profiles, and a process to correct the profiles when errors are discovered. They stated that it is ''virtually impossible to get a profile corrected under the current system.''

Motor carriers have access to their carrier profiles in the MCMIS, thus, there is little justification for presenting motor carriers in advance of the CR with the information in their carrier profile. The FHWA has consistently recommended that when errors from a State source are discovered in a motor carrier's safety profile, they should be brought to the attention of the State that performed the inspection or entered invalid or incorrect information into Safetynet. The FHWA is aware of only several instances where a State, when apprised of an error by a motor carrier, was unable or unwilling to correct the error. If motor carriers are unable to resolve the discrepancy with the State, they should contact the OMC Office of Motor Carrier Information Analysis (telephone (202) 366–4039). This office will work with the State, or if appropriate, correct the error in the safety profile on its own initiative. The FHWA continues to work with its State partners to improve the quality of the data in motor carrier safety profiles.

Implementation of Proposed SFRM

A number of the commenters opposed the implementation of the proposed SFRM, which they viewed as a ministerial task to comply with the findings of the Court in the *MST Express case.* Several of these commenters referred to the June 18, 1997, Motor Carrier Safety Audit and Rating Forum sponsored by the ATA, which they stated was held to build a consensus on the future of the safety rating process. It concluded that the current system must be replaced with a fairer, more uniform performance-based system.

The ATA wanted the ''new era'' concept of safety performance to be based less on regulatory compliance and more on ''performance measurements,'' e.g., accident rates, driver and vehicle OOS rates, driver traffic convictions, and violations of OOS orders. Other commenters agreed.

The ODOT/MCTB commented that, ''as proposed, the MCSFR [motor carrier safety fitness rating] methodology represents the best collection of safety information for a motor carrier currently

available.'' It stated that ''the fact that only 'acute' and 'critical' regulations affect the safety rating adds further credibility to the safety rating process. It is Oregon's opinion that the dreaded 'paper work' violations are not included in either the 'acute' or 'critical' regulations.'' The IBT also recommended that the FHWA adopt the SFRM as proposed.

The FHWA believes that the proposed SFRM establishes a fair and reasonable procedure to decide the safety fitness of owners and operators of CMVs. It also meets the statutory mandate (49 U.S.C. 31144) because it includes:

(a) specific, initial and continuing requirements to be met by the owners, operators, and other persons to prove safety fitness;

(b) a means of deciding whether the owners, operators, and other persons meet the safety fitness requirements in (a); and

(c) specific time deadlines for action by the FHWA in making fitness determinations.

Miscellaneous

Several sections in Part 385 are amended to correct previous technical errors. The definition of ''Safety review'' in § 385.3 is removed since Safety Reviews were discontinued as of October 1, 1994. The definitions of *Conditional safety rating* and *Unsatisfactory safety rating* in § 385.3 are revised to include references to § 385.5 (i) through (k), dealing with hazardous materials and accidents. These subsections were inadvertently omitted when the final rule was published on December 19, 1988 (53 FR 50961). Section 385.9 is revised to include a subsection (b) to meet the requirement in 49 U.S.C. 31144(a)(1)(C) that there be specific time deadlines for action by the Secretary in making fitness decisions.

Section 385.17 is revised in a number of ways. The FHWA published a proposed revision of § 385.17 for notice and comment under FHWA Docket No. MC–96–18 on April 29, 1996 (61 FR 18866, 18884), where it was designated as § 362.107. In addition to explaining more clearly the process to request a safety rating change based on corrective actions taken, that provision would have given carriers whose request was denied new rights to administrative review. Commenters favored this change almost unanimously. In order to make these rights available to motor carriers as soon as possible, the proposed provision designated as § 362.107 in the April 29 NPRM has been incorporated into this final rule, with minor changes, as § 385.17. Many parties concerned about the safety rating system submitted comments in response to the April 29, 1996, NPRM and the May 28, 1997, NPRM that opened this docket. Because the amended version of § 385.17 has already been published for notice and comment, though under a different docket and with a different section number, the FHWA finds good cause (pursuant to 5 U.S.C. 553(b)(B)) to adopt § 385.17, and the related amendments to §§ 385.11, and 385.15, which were also published in the April 29 NPRM, without re-publishing them under this docket as a Supplemental NPRM.

The current appendix to Part 385 is redesignated as appendix A. The Explanation of Safety Rating Process is added as appendix B. Changes to appendix B from the appendix in the NPRM are a result of using several years accident rates instead of one year for the accident rates in the accident rating factor, and editorial changes for clarity. Appendix B is further changed by substituting ''proposed rating'' for ''anticipated rating'', to conform with the procedure in § 385.11(b).

Rulemaking Analyses and Notices

For the reasons given below, the FHWA finds good cause to make this final rule effective less than 30 days after the date of publication. The interim final rule adopting a Safety Fitness Rating Methodology (SFRM) was promulgated on May 28, 1997 (62 FR 22807), and will expire on November 28, 1997. That rule allows the FHWA to assign safety ratings to motor carriers which use CMVs to transport 15 or more passengers, including the driver, or hazardous materials in quantities that require placarding under DOT regulations. The final rule published today does not change the existing motor carrier safety requirements or impose new obligations on motor carriers. It merely sets forth an SFRM the FHWA will use to evaluate motor carriers' compliance with the standards and factors specified in 49 C.F.R. 385.5 and 385.7. Furthermore, it gives carriers 45 days after notification of a proposed *conditional* or *unsatisfactory* rating before the rating takes effect. During that time, motor carriers will have an opportunity to correct deficiencies in their compliance with Part 385 or to point out to the agency any material factual issues in dispute. No such grace period is available under the current interim final rule. Carriers rated less than *satisfactory* under the SFRM will therefore have at least 45 days after the effective date of this rule before the rating takes effect. In view of these facts, and because the demands of public safety and a specific statutory mandate (49 U.S.C. 5113) require the agency to continue rating passenger and hazardous materials carriers without interruption, the FHWA hereby finds good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective on November 28, 1997.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. No serious inconsistency or interference with another agency's actions or plans is likely to result, and it is unlikely that this regulatory action will have an annual effect on the economy of $100 million or more. This final rule is administrative in nature in that it neither imposes new requirements upon the motor carrier industry nor alters the August 16, 1991, interim final rule implementing the provisions of 49 U.S.C. 5113. The FHWA does not anticipate any new economic impacts as a result of this rulemaking. This rule would not impose any costs on motor carriers in addition to those assessed in the Regulatory Evaluation and Regulatory Flexibility Analysis prepared in support of the 1988 final rule. (The 1991 interim final amended the 1988 rule in ways that the FHWA believes had minimal economic impact on motor carriers.)

The existing rating factors are used to evaluate the degree to which the motor carrier complies with the regulations and add no costs because the carrier is already required to comply. Compliance with regulations, however, is only a surrogate for actual safety performance. The addition of the accident factor introduces a direct measure of performance into the equation. In 1988, this factor was not considered as having a cost consequence because the effect of a negative rating resulting from substantially higher accidents than the norm would be virtually identical to the impact on the carrier's business that would flow from public knowledge of its poor safety performance.

The impact resulting from a negative rating generally relates to knowledge of the rating by shipper or insurer. If those same entities know of the unusually high accident rate, the FHWA believes the consequences would or should be approximately the same.

Considering all recordable accidents instead of only preventable recordable accidents will have the same sort of impact. Nevertheless, the FHWA believes that this is a significant regulatory action within the meaning of the Department of Transportation's

regulatory policies and procedures because there is significant public interest in this action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities and has determined that it will not have a significant economic impact on a substantial number of small entities. The motor carriers economically impacted by this rulemaking will be those who are rated as *unsatisfactory* and fail to take appropriate actions to have their rating upgraded. In the past, relatively few small motor carriers had been affected by the statutory consequences of an *unsatisfactory*, and there is no reason to believe that those impacts will increase in any way by this action.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. These safety requirements do not directly preempt any State law or regulation, and no additional costs or burdens would be imposed on the States as a result of this action.

Furthermore, the State's ability to discharge traditional State governmental functions would not be affected by this rulemaking.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

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

List of Subjects in 49 CFR Part 385

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, and Safety fitness procedures.

Issued on: October 31, 1997.

Gloria Jeff,

Acting Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, Chapter III, Part 385 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, and 31502; 49 CFR 1.48.

2. In § 385.3, under the definition ''reviews'', remove and reserve paragraph (2) ''safety review''; and under the definition ''safety ratings'', revise paragraphs (2) ''conditional safety rating'' and (3) ''unsatisfactory safety rating'' to read as follows:

§ 385.3 Definitions.

* * * * *

Reviews. * * *

(1) * * *

(2) [Reserved]

(3) * * *

Safety ratings: (1) * * *

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in § 385.5 (a) through (k).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in § 385.5 (a) through (k).

* * * * *

3. Section 385.9 is revised to read as follows:

§ 385.9 Determination of a safety rating.

(a) Following a compliance review of a motor carrier operation, the FHWA, using the factors prescribed in § 385.7 as computed under the Safety Fitness Rating Methodology set forth in appendix B of this part, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standard set forth in § 385.5, and assign a safety rating accordingly.

(b) Unless otherwise specifically provided in this part, a safety rating will be issued to a motor carrier within 30 days following the completion of a compliance review.

4. Section 385.11 is revised to read as follows:

§ 385.11 Notification of a safety rating.

(a) Except as provided elsewhere in this section, written notification of the safety rating will be provided to a motor carrier as soon as practicable after assignment of the rating, but not later than 30 days after the review that produced the rating.

(b) Before a safety rating of *unsatisfactory* or *conditional*, is assigned to any motor carrier, the FHWA will issue a notice of proposed safety rating. The notice of proposed safety rating will list the deficiencies discovered during the review of the motor carrier's operations, for which corrective actions must be taken. A proposed *conditional* safety rating (which is an improvement of an existing *unsatisfactory* safety rating) becomes effective as soon as it issued from Washington, D.C., and the carrier may also avail itself of relief under the § 385.15, Administrative Review and § 385.17, Change to safety rating based on corrective actions.

(c) A notice of a proposed safety rating of *unsatisfactory* will indicate that, if the *unsatisfactory* rating becomes final, the motor carrier will be subject to the provisions of § 385.13, which prohibit motor carriers rated *unsatisfactory* from transporting hazardous materials or passengers, and other consequences that may result from such rating.

(d) Except as provided in § 385.17, a proposed safety rating issued pursuant to paragraph (b) of this section will become the motor carrier's final safety rating 45 days after the date the notice of proposed safety rating is received by the motor carrier.

5. Section 385.13 is revised to read as follows:

§ 385.13 Unsatisfactory rated motor carriers—prohibition on transportation of hazardous materials and passengers; ineligibility for Federal contracts.

(a) A motor carrier rated *unsatisfactory* is prohibited from operating a commercial motor vehicle to transport—

(1) Hazardous materials for which vehicle placarding is required pursuant to part 172 of chapter 1 of this title; or

(2) More than 15 passengers, including the driver.

(b) A motor carrier subject to the provisions of paragraph (a) of this section is ineligible to contract or subcontract with any Federal agency for transportation of the property or passengers referred to in paragraphs (a)(1) and (a)(2) of this section.

(c) *Penalties.* When a carrier subject to the prohibitions in paragraph (a) of this section is known to transport the property or passengers referred to therein, an order will be issued placing those operations out of service. Any motor carrier that operates commercial motor vehicles in violation of this section will be subject to the penalty provisions listed in part 386 of this chapter.

6. Section 385.15 is revised to read as follows:

§ 385.15 Administrative review.

(a) Within the 45 day notice period provided in § 385.11(d), or within 45 days after denial of a request for a change in rating as provided in § 385.17(g), the motor carrier may petition the FHWA for administrative review of a proposed or final safety rating by submitting a written request to the Director, Office of Motor Carrier Field Operations, 400 Seventh Street, SW., Washington DC 20590.

(b) The petition must state why the proposed safety rating is believed to be in error and list all factual and procedural issues in dispute. The petition may be accompanied by any information or documents the motor carrier is relying upon as the basis for its petition.

(c) The Director, Office of Motor Carrier Field Operations, may request the petitioner to submit additional data and attend a conference to discuss the safety rating. Failure to provide the information requested or attend the conference may result in dismissal of the petition.

(d) The petitioner shall be notified in writing of the decision on administrative review. The notification will occur within 30 days after receipt of a petition from a hazardous materials or passenger motor carrier.

(e) If the decision on administrative review results in a final rating of *unsatisfactory* for a hazardous materials or passenger motor carrier, the decision shall be accompanied by an appropriate out-of-service order.

(f) All other decisions on administrative review of ratings constitute final agency action. Thereafter, improvement in the rating may be obtained under § 385.17 of this part.

7. Section 385.17 is revised to read as follows:

§ 385.17 Change to safety rating based on corrective actions.

(a) Within the 45-day period specified in § 385.11(d), or at any time after a rating has become final, a motor carrier may request a change to a proposed or final safety rating based on evidence that corrective actions have been taken and that its operations currently meet the safety standard and factors specified in § 385.9.

(b) A request for a change must be made, in writing, to the Regional Director, Office of Motor Carriers, for the FHWA Region in which the carrier maintains its principal place of business, and must include a written description of corrective actions taken and other documentation that may be relied upon as a basis for the requested change to the proposed rating.

(c) The final determination on the request for change will be based upon the documentation submitted and any additional investigation deemed necessary.

(d) The filing of a request for change to a proposed rating under this section does not stay the 45-day period established in § 385.11(d), after which a proposed safety rating becomes final. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and a final determination cannot be made within the 45-day period, the period before the proposed safety rating becomes effective may be extended for up to 10 days at the discretion of the Regional Director.

(e) If it is determined that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in § 385.9, the motor carrier will be provided with written notification that the proposed rating will not be assigned, or, if already assigned, rescinded.

(f) If it is determined that the motor carrier has not taken all the corrective actions required or that its operations still fail to meet the safety standards and factors specified in § § 385.5 and 385.7, the motor carrier shall be provided with written notification that its request has been denied and that the proposed safety rating will become final pursuant to § 385.11(d), or that a safety rating currently in effect will not be changed.

(g) Any motor carrier whose request for change is denied pursuant to paragraph (f) of this section may petition for administrative review pursuant to § 385.15 within 45 days of the denial of the request for rating change. If the proposed rating has become final, it shall remain in effect during the period of any administrative review unless stayed by the reviewing official.

8. Section 385.19 is revised to read as follows:

§ 385.19 Safety fitness information.

(a) Final ratings will be made available to other Federal and State agencies in writing, telephonically or by remote computer access.

(b) The final safety rating assigned to a motor carrier will be made available to the public upon request. Any person requesting the assigned rating of a motor carrier shall provide the FHWA with the motor carrier's name, principal office address, and, if known, the DOT number or the ICC docket number, if any.

(c) Requests shall be addressed to the Office of Motor Carrier Information Management and Analysis, HIA–1, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

(d) Oral requests by telephone to (800) 832–5660 will be given an oral response.

9. Part 385 is amended by revising appendix B to read as follows:

Appendix B TO Part 385—Explanation of Safety Rating Process

(a) Section 215 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31144) directed the Secretary of Transportation to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles operating in interstate or foreign commerce. The Secretary, in turn, delegated this responsibility to the Federal Highway Administration (FHWA).

(b) As directed, FHWA promulgated a safety fitness regulation, entitled ''Safety Fitness Procedures,'' which established a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings and established a ''safety fitness standard'' which a motor carrier must meet to obtain a *satisfactory* safety rating.

(c) To meet the safety fitness standard, a motor carrier must demonstrate to the FHWA that it has adequate safety management controls in place which function effectively to ensure acceptable compliance with the applicable safety requirements. A ''safety fitness rating methodology'' (SFRM) was developed by the FHWA, which uses data from compliance reviews (CRs) and roadside inspections to rate motor carriers.

(d) The safety rating process developed by FHWA's Office of Motor Carriers is used to:

1. Evaluate safety fitness and assign one of three safety ratings (*satisfactory, conditional* or *unsatisfactory*) to motor carriers operating in interstate commerce. This process conforms to 49 CFR 385.5, Safety fitness

standard, and § 385.7, Factors to be considered in determining a safety rating.

2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Material Regulations (HMRs). These are carriers rated *unsatisfactory* or *conditional*.

I. Source of Data for Rating Methodology

(a) The FHWA's rating process is built upon the operational tool known as the CR. This tool was developed to assist Federal and State safety specialists in gathering pertinent motor carrier compliance and accident information.

(b) The CR is an in-depth examination of a motor carrier's operations and is used (1) to rate unrated motor carriers, (2) to conduct a follow-up investigation on motor carriers rated *unsatisfactory* or *conditional* as a result of a previous review, (3) to investigate complaints, or (4) in response to a request by a motor carrier to reevaluate its safety rating. Documents such as those contained in driver qualification files, records of duty status, vehicle maintenance records, and other records are thoroughly examined for compliance with the FMCSRs and HMRs. Violations are cited on the CR document. Performance-based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

II. Converting CR Information Into a Safety Rating

(a) The FHWA gathers information through an in-depth examination of the motor carrier's compliance with identified ''acute'' or ''critical'' regulations of the FMCSRs and HMRs.

(b) Acute regulations are those identified as such where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier. An example of an acute regulation is § 383.37(b), allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver's License (CDL) to operate a commercial motor vehicle. Noncompliance with § 383.37(b) is usually discovered when the motor carrier's driver qualification file reflects that the motor carrier had knowledge of a driver with more than one CDL, and still permitted the driver to operate a commercial motor vehicle. If the motor carrier did not have such knowledge or could not reasonably be expected to have such knowledge, then a violation would not be cited.

(c) Critical regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls. An example of a critical regulation is § 395.3(a)(1), requiring or permitting a driver to drive more than 10 hours.

(d) The list of the acute and critical regulations which are used in determining safety ratings is included at the end of this document.

(e) Noncompliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates. The FHWA has used noncompliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine motor carriers' adherence to the Safety fitness standard in § 385.5.

(f) The regulatory factors, evaluated on the basis of the adequacy of the carrier's safety management controls, are (1) Parts 387 and 390; (2) Parts 382, 383 and 391; (3) Parts 392 and 395; (4) Parts 393 and 396 when there are less than three vehicle inspections in the last 12 months to evaluate; and (5) Parts 397, 171, 177 and 180.

(g) For each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation during the CR, one point will be assessed. A pattern is more than one violation. When a number of documents are reviewed, the number of violations required to meet a pattern is equal to at least 10 percent of those examined.

(h) However, each pattern of noncompliance with a critical regulation relative to Part 395, Hours of Service of Drivers, will be assessed two points.

A. Vehicle Factor

(a) When a total of *three or more inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months prior to the CR or performed at the time of the review,* the Vehicle Factor (Parts 393 and 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute regulations and/or a pattern of noncompliance with critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor rating as follows:

1. If a motor carrier has three or more roadside vehicle inspections in the twelve months prior to the carrier review, or three vehicles inspected at the time of the review, or a combination of the two totaling three or more, and the vehicle OOS rate is 34 percent or greater, the initial factor rating will be *conditional.* The requirements of Part 396, Inspection, Repair, and Maintenance, will be examined during each review. The results of the examination could lower the factor rating to *unsatisfactory* if noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered. If the examination of the Part 396 requirements reveals no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *conditional.*

2. If a carrier's vehicle OOS rate is less than percent, the initial factor rating will be *satisfactory.* If noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered during the examination of Part 396 requirements, the factor rating will be lowered to *conditional.* If the examination of Part 396 requirements discovers no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *satisfactory.*

(b) Nearly two million vehicle inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Since many of the roadside inspections are targeted to visibly defective vehicles and since there are a limited number of inspections for many motor carriers, the use of that data is limited. Each CR will continue to have the requirements of Part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

B. Accident Factor

(a) In addition to the five regulatory rating factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate which the carrier has experienced during the past 12 months. *Recordable* accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) Recordable accidents per million miles were computed for each CR performed in Fiscal Years 1994,1995 and 1996. The national average for all carriers rated was 0.747, and .839 for carriers operating entirely within the 100 air mile radius.

(c) Experience has shown that urban carriers, those motor carriers operating primarily within a radius of less than 100 air miles (normally in urban areas) have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(d) The recordable accident rate will be used to rate Factor 6, Accident. It will be used only when a motor carrier incurs two or more recordable accidents occurred within the 12 months prior to the CR. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable accident rate greater than 1.7 will receive an *unsatisfactory* rating for the accident factor. All other carriers with a recordable accident rate greater than 1.5 will receive an *unsatisfactory* factor rating. The rates are a result of roughly doubling the national average accident rate for each type of carrier rated in Fiscal Years 1994, 1995 and 1996.

(e) The FHWA will continue to consider preventability when a motor carrier contests a rating by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: ''If a driver, who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.''

C. Factor Ratings

(a) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into five regulatory areas called ''factors.''

(b) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Factor Ratings are determined as follows:

Factors

Factor 1 General=Parts 387 and 390
Factor 2 Driver=Parts 382, 383 and 391
Factor 3 Operational=Parts 392 and 395
Factor 4 Vehicle=Parts 393 and 396
Factor 5 Haz. Mat.=Parts 397, 171, 177 and 180
Factor 6 Accident Factor=Recordable Rate

''Satisfactory''—if the acute and/or critical=0 points
''Conditional''—if the acute and/or critical=1 point
''Unsatisfactory''—if the acute and/or critical=2 or more points

III. Safety Rating

A. Rating Table

(a) The ratings for the six factors are then entered into a rating table which establishes the motor carrier's safety rating.

(b) The FHWA has developed a computerized rating formula for assessing the information obtained from the CR document and is using that formula in assigning a safety rating.

MOTOR CARRIER SAFETY RATING TABLE

Factor ratings		Overall safety rating
Unsatisfactory	Conditional	
0	2 or less.	SATISFACTORY.
0	more than 2.	CONDITIONAL.
0	2 or less.	CONDITIONAL.
1	more than 2.	UNSATISFACTORY.
2 or more.	0 or more.	UNSATISFACTORY.

B. Proposed Safety Rating

(a) The proposed safety rating will appear on the CR. The following appropriate information will appear after the last entry on the CR, MCS–151, Part B.

''Your proposed safety rating is SATISFACTORY.''

Your proposed safety rating is CONDITIONAL.'' The proposed rating will become the final rating 45 after you receive this notice.

OR

''Your proposed safety rating is UNSATISFACTORY.'' The safety rating will become the final safety rating 45 days after you receive this notice.

(b) Proposed safety ratings of *conditional* or *unsatisfactory* will list the deficiencies discovered during the CR for which corrective actions must be taken.

(c) Proposed *unsatisfactory* safety ratings will indicate that, if the *unsatisfactory* rating becomes final, the motor carrier will be subject to the provision of § 385.13, which prohibits motor carriers rated *unsatisfactory* from transporting hazardous materials requiring placarding or 15 passengers or more including the driver.

IV. Assignment of Final Rating/Motor Carrier Notification

When the official rating is determined in Washington, D.C., the FHWA notifies the motor carrier in writing of its safety rating as prescribed in § 385.11. A proposed *conditional* safety rating (which is an improvement of an existing *unsatisfactory* rating) becomes effective as soon as the official safety rating from Washington, D.C. is issued, and the carrier may also avail itself of relief under the § 385.15, Administrative Review and § 385.17, Change to safety rating based on corrective actions.

V. Motor Carrier Rights to a Change in the Safety Rating

Under §§ 385.15 and 385.17, motor carriers have the right to petition for a review of their ratings *if there are factual or procedural disputes,* and to request another review after corrective actions have been taken. They are the procedural avenues a motor carrier which believes its safety rating to be in error may exercise, and the means to request another review after corrective action has been taken.

VI. Conclusion

(a) The FHWA believes this ''safety fitness rating methodology'' is a reasonable approach for assigning a safety rating which best describes the current safety fitness posture of a motor carrier as required by the safety fitness regulations (§ 385.9). This methodology has the capability to incorporate regulatory changes as they occur.

(b) Improved compliance with the regulations leads to an improved rating, which in turn increases safety. This increased safety is our regulatory goal.

VII. List of Acute and Critical Regulations

§ 382.115(c) Failing to implement an alcohol and/or controlled substance testing program. (acute)
§ 382.201 Using a driver who has an alcohol concentration of 0.04 or greater. (acute)
§ 382.211 Using a driver who has refused to submit to an alcohol controlled substances test required under Part 382. (acute)
§ 382.213(b) Using a driver who has used a controlled substance. (acute)
§ 382.215 Using a driver who has tested positive for a controlled substance. (acute)
§ 382.301(a) Using a driver before the motor carrier has received negative pre-employment controlled substance test results. (critical)
§ 382.303(a) Failing to conduct post accident testing on driver for alcohol and/or controlled substances. (critical)
§ 382.305 Failing to implement a random controlled substances and/or an alcohol testing program. (acute)
§ 382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than 25 percent of the average number of driver positions. (critical)
§ 382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than 50 percent of the average number of driver positions. (critical)
§ 382.309(a) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. (acute)
§ 382.309(b) Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances. (acute)
§ 382.503 Driver performing safety sensitive function, after engaging in conduct prohibited by Subpart B, without being evaluated by substance abuse professional, as required by § 382.605. (critical)
§ 382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04. (acute)
§ 382.605(c)(1) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 or with verified negative test result, after engaging in conduct prohibited by Part 382 Subpart B. (acute)
§ 382.605(c)(2)(ii) Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and controlled substance tests in the first 12 months following the driver's return to duty. (critical)
§ 383.23(a) Operating a commercial motor vehicle without a valid commercial driver's license. (critical)
§ 383.37(a) Allowing, requiring, permitting, or authorizing an employee with a Commercial Driver's License which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle. (acute)
§ 383.37(b) Allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver's License to operate a commercial motor vehicle. (acute)
§ 383.51(a) Allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle. (acute)
§ 387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. (acute)
§ 387.7(d) Failing to maintain at principal place of business required proof of financial responsibility. (critical)
§ 387.31(a) Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility. (acute)
§ 387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger vehicles. (critical)
§ 390.15(b)(2) Failing to maintain copies of all accident reports required by State or

other governmental entities or insurers. (critical)
§ 390.35 Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records. (acute)
§ 391.11(a)/391.95 Using an unqualified driver, a driver who has tested positive for controlled substances, or refused to be tested as required. (acute)
§ 391.11(b)(6) Using a physically unqualified driver. (acute)
§ 391.15(a) Using a disqualified driver. (acute)
§ 391.45(a) Using a driver not medically examined and certified. (critical)
§ 391.45(b) Using a driver not medically examined and certified each 24 months. (critical)
§ 391.51(a) Failing to maintain driver qualification file on each driver employed. (critical)
§ 391.51(b)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)
§ 391.51(c)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)
§ 391.51(c)(3) Failing to maintain inquiries into driver's driving record in driver's qualification file. (critical)
§ 391.51(d)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)
§ 391.87(f)(5) Failing to retain in the driver's qualification file test finding, either ''Negative'' and, if ''Positive'', the controlled substances identified. (critical)
§ 391.93(a) Failing to implement a controlled substances testing program. (acute)
§ 391.99(a) Failing to require a driver to be tested for the use of controlled substances, upon reasonable cause. (acute)
§ 391.103(a) Failing to require a driver-applicant whom the motor carrier intends to hire or use to be tested for the use of controlled substances as a pre-qualification condition. (critical)
§ 391.109(a) Failing to conduct controlled substance testing at a 50% annualized rate. (critical)
§ 391.115(c) Failing to ensure post-accident controlled substances testing is conducted and conforms with 49 CFR Part 40. (critical)
§ 392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. (critical)
§ 392.4(b) Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle. (acute)
§ 392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage. (acute)
§ 392.5(b)(2) Requiring or permitting a driver who has consumed an intoxicating beverage within 4 hours to operate a motor vehicle. (acute)
§ 392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed. (critical)
§ 392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured. (critical)
§ 395.1(i)(1)(i) Requiring or permitting a driver to drive more than 15 hours. (Driving in Alaska.) (critical)
§ 395.1(i)(1)(ii) Requiring or permitting a driver to drive after having been on duty 20 hours. (Driving in Alaska.) (critical)
§ 395.1(i)(1)(iii) Requiring or permitting driver to drive after having been on duty more than 70 hours in 7 consecutive days. (Driving in Alaska.) (critical)
§ 395.1(i)(1)(iv) Requiring or permitting driver to drive after having been § on duty more than 80 hours in 8 consecutive days. (Driving in Alaska.) (critical)
§ 395.3(a)(1) Requiring or permitting driver to drive more than 10 hours. (critical)
§ 395.3(a)(2) Requiring or permitting driver to drive after having been on duty 15 hours. (critical)
§ 395.3(b) Requiring or permitting driver to drive after having been on duty more than 60 hours in 7 consecutive days. (critical)
§ 395.3(b) Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days. (critical)
§ 395.8(a) Failing to require driver to make a record of duty status. (critical)
§ 395.8(e) False reports of records of duty status. (critical)
§ 395.8(i) Failing to require driver to forward within 13 days of completion, the original of the record of duty status. (critical)
§ 395.8(k)(1) Failing to preserve driver's record of duty status for 6 months. (critical)
§ 395.8(k)(1) Failing to preserve driver's records of duty status supporting documents for 6 months. (critical)
§ 396.3(b) Failing to keep minimum records of inspection and vehicle maintenance. (critical)
§ 396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared ''out-of-service'' before repairs were made. (acute)
§ 396.11(a) Failing to require driver to prepare driver vehicle inspection report. (critical)
§ 396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report. (acute)
§ 396.17(a) Using a commercial motor vehicle not periodically inspected. (critical)
§ 396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards. (acute)
§ 397.5(a) Failing to ensure a motor vehicle containing Class A or B explosives, (Class 1.1, 1.2, or 1.3) is attended at all times by its driver or a qualified representative. (acute)
§ 397.7(a)(1) Parking a motor vehicle containing Class A or B explosives (1.1, 1.2, 1.3) within 5 feet of traveled portion of highway. (critical)
§ 397.7(b) Parking a motor vehicle containing hazardous material(s) within 5 feet of traveled portion of highway or street. (critical)
§ 397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing explosives, oxidizing materials, or flammable materials. (critical)
§ 397.19(a) Failing to furnish driver of motor vehicle transporting Class A or B explosives (Class 1.1, 1.2, 1.3) with a copy of the rules of Part 397 and/or emergency response instructions. (critical)
§ 397.67(d) Requiring or permitting the operation of a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material that is not accompanied by a written route plan. (critical)
§ 171.15 Carrier failing to give immediate telephone notice of an incident involving hazardous materials. (critical)
§ 171.16 Carrier failing to make a written report of an incident involving hazardous materials. (critical)
§ 177.800(c) Failing to instruct a category of employees in hazardous materials regulations. (critical)
§ 177.817(a) Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper. (critical)
§ 177.817(e) Failing to maintain proper accessibility of shipping papers. (critical)
§ 177.823(a) Moving a transport vehicle containing hazardous material that is not properly marked or placarded. (critical)
§ 177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals. (acute)
§ 180.407(a) Transporting a shipment of hazardous material in cargo tank that has not been inspected or retested in accordance with § 180.407. (critical)
§ 180.407(c) Failing to periodically test and inspect a cargo tank. (critical)
§ 180.415 Failing to mark a cargo tank which passed an inspection or test required by § 180.407. (critical)
§ 180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers, as required. (critical)
§ 180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required. (critical)

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Proposed Rules

Federal Register
Vol. 62, No. 215
Thursday, November 6, 1997

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.

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 1997–15]

Rulemaking Petition: Definition of ''Express Advocacy''; Notice of Availability

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: Notice of availability.

SUMMARY: On October 20, 1997, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the James Madison Center for Free Speech. The Petition urges the Commission to revise its rules defining ''express advocacy'' to conform with a recent court decision. The Petition is available for inspection in the Commission's Public Records Office, through its FAXLINE service, and on its Internet home page.

DATES: Statements in support of or in opposition to the Petition must be filed on or before December 8, 1997.

ADDRESSES: All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Electronic mail comments should be sent to expressad@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Electronic comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The petitioner is requesting the Commission to revise the definition of ''express advocacy'' set forth in its rules at 11 CFR 100.22 to reflect the decision in *Maine Right to Life Committee* v. *FEC,* 914 F.Supp. 8 (D.Me. 1995), *aff'd per curiam*, 98 F.3d 1 (1st Cir. 1996), *cert. denied*, No. 96–1818 (U.S. 1997). Specifically, the Petition urges repeal of 11 CFR 100.22(b), which was held invalid in that case. The challenged paragraph defines ''express advocacy'' to include communications in which the electoral portion is ''unmistakable, unambiguous, and suggestive of only one meaning, and reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.''

The ''express advocacy'' standard is used to determine if a disbursement qualifies as a reportable independent expenditure or membership communication for purposes of the Federal Election Campaign Act; if independent communications by corporations and labor organizations are prohibited under the Act; and if campaign communications require a disclaimer. *See* 2 U.S.C. 431(17) and (9)(B)(iii); 434(b)(4) and (c); 441b, 441d; *Federal Election Commission* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986).

Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 999 E Street, N.W., Washington, DC 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Interested persons may also obtain a copy of the Petition by dialing the Commission's FAXLINE service at (202) 501–3413 and following its instructions, at any time of the day and week. Request document #232. The text of the petition is available on the Internet at the Commission's home page, www.fec.gov.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: November 3, 1997.

Joan D. Aikens,

Vice Chairman.

[FR Doc. 97–29375 Filed 11–5–97; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 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 all Airbus Model A300 and A300–600 series airplanes. This proposal would require repetitive inspections for cracking of the lugs of hinge brackets of inner airbrakes (spoilers) No. 1 and No. 2, and corrective action, if necessary. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent detachment of the spoilers and consequent reduced controllability of the airplane.

DATES: Comments must be received by December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles D. Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2589; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–240–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–103, Attention: Rules Docket No. 97–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300 and A300–600 series airplanes. The DGAC advises that it received four reports indicating that, during routine maintenance, fatigue cracking was detected in lugs of the center hinge bracket of an inner airbrake (spoiler) No. 1. Fatigue cracking and failure of center hinge brackets due to increased loading could result in propagation of cracks of the inner and outer hinge brackets. Such fatigue cracking, if not detected and corrected in a timely manner, could result in detachment of the spoilers and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–57–0229 (for Model A300 series airplanes) and A300–57–6074 (for Model A300–600 series airplanes), both dated October 16, 1996. These service bulletins describe procedures for repetitive high frequency eddy current (HFEC) inspections for cracking of the lugs of hinge brackets of spoilers No. 1 and No. 2 of both wings; and replacement, with a serviceable bracket, of any bracket having a cracked lug. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–080–211(B)R1, dated May 21, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as described below.

Differences Between the Proposed AD and the Service Bulletins

Airbus Service Bulletins A300–57–6074 and A300–57–0229, both dated October 16, 1996, specify that the corrective actions required by this proposed AD may be accomplished in accordance with a method ''left to the operator's discretion.'' However, operators would use a discretionary method only if that method has been approved by the FAA. Therefore, this AD requires that the actions be accomplished in accordance with the procedures specified in Repair Drawing R57240205 (for a center hinge bracket) and/or R57240208 (for an inner or outer hinge bracket), as applicable.

Cost Impact

The FAA estimates that 102 Airbus Model A300 and A300–600 series 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. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $24,480, 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 AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 97–NM–240–AD.

Applicability: All Model A300 and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 detect and correct cracking of the lugs of hinge brackets of inner airbrakes (spoilers) No. 1 and No. 2 of both wings, which could result in detachment of the spoilers and consequent reduced controllability of the airplane, accomplish the following:

(a) Perform a high frequency eddy current (HFEC) inspection for cracking of the lugs of the center hinge brackets of spoilers No. 1 and No. 2, in accordance with Airbus Service Bulletin A300–57–0229 (for Model A300 series airplanes) or A300–57–6074 (for Model A300–600 series airplanes), both dated October 16, 1996, as applicable. Accomplish the inspection at the time specified in paragraph (a)(1), (a)(2), or (a)(3), as applicable, of this AD. If any discrepancy is found, prior to further flight, perform the follow-on actions specified in the Accomplishment Instructions of the applicable service bulletin. Repeat the HFEC inspection thereafter at intervals not to exceed 8,200 flight cycles.

(1) For airplanes that have accumulated less than 23,200 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 16,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 23,200 total flight cycles or more, but less than 36,500 total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 36,500 total flight cycles or more as of the effective date of this AD: Inspect within 50 flight cycles after the effective date of this AD.

(b) Airbus Service Bulletins A300–57–6074 and A300–57–0229, both dated October 16, 1996, specify that the actions required by paragraph (a) of this AD may be accomplished in accordance with a method ''left to the operator's discretion.'' [Operators may use a discretionary method only if that method has been approved as an alternative method of compliance in accordance with paragraph (c) of this AD.] Therefore, this AD requires that the replacement of a bracket as required by paragraph (a) be accomplished in accordance with the procedures specified in Repair Drawing R57240205 (for a center hinge bracket) and/or R57240208 (for an inner or outer hinge bracket), as applicable.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(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.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–080–211(B)R1, dated May 21, 1997.

Issued in Renton, Washington, on October 30, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29342 Filed 11–5–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–205–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 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 all Airbus Model A310 and A300–600 series airplanes. This proposal would require a one-time visual inspection to determine the accuracy of the outer placards of the static ports. This proposal also would require a one-time inspection to detect crossed connections of the air data static system and the static probe heating system, and correction of any discrepancies. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent erroneous display of altitude information to the flight crew, and consequent reduced operational safety during all phases of flight.

DATES: Comments must be received by December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–205–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–103, Attention: Rules Docket No. 97–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A310 and A300–600 series airplanes. The DGAC advises that, during a routine inspection, one operator found that the tubings of the air data static system connected to the captain and first officer's static probes were inverted (i.e., cross-connected) on both the left-hand and right-hand side of the aircraft. The heating circuit wires of the static probe heating system to the captain and first officer's static probes on the left-hand side of the airplane were also found to be inverted. The cross connections of the air data tubings and probe heat wiring apparently resulted from an inappropriate installation process on the assembly line. This condition, if not corrected, could result in erroneous display of altitude information to the flight crew, and consequent reduced operational safety during all phases of flight.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) 34–04, dated July 16, 1996, which describes procedures to perform a one-time visual inspection to determine the accuracy of the outer placards. The AOT also describes procedures to perform a one-time visual inspection to detect crossed connections of the air data static system and the static probe heating system, and correction of any discrepancies. Accomplishment of the actions specified in the AOT are intended to adequately address the identified unsafe condition. The DGAC classified this AOT as mandatory and issued French airworthiness directive 97–098–216 (B), dated March 26, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the AOT described previously.

Cost Impact

The FAA estimates that 94 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, 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 $28,200, or $300 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 97–NM–205–AD.

Applicability: All Model A310 and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 erroneous display of altitude information to the flight crew, and consequent reduced operational safety during all phases of flight, accomplish the following:

(a) Within 600 flight hours after the effective date of this AD, perform a one-time visual inspection of the outer placards of the static ports to determine that the identification of the static port corresponds with the specified position on the aircraft, in accordance with Airbus All Operators Telex (AOT) 34–04, dated July 16, 1996.

(b) Within 600 flight hours after the effective date of this AD, perform a one-time visual inspection of the pneumatic connections of the captain, first officer, and standby air data static systems to detect cross-connected tubing, and conduct an operational check of each of the static probe heating systems to detect cross-connected wiring, in accordance with Airbus All Operators Telex (AOT) 34–04, dated July 16, 1996.

(c) If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with Airbus AOT 34–04, dated July 16, 1996.

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

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

(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.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–098–216 (B), dated March 26, 1997.

Issued in Renton, Washington, on October 30, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29341 Filed 11–5–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–42]

Proposed Amendment to Class E Airspace; Allentown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Allentown,, PA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Allentown Queen City Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 8, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–42, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particiulary helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–42.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR Part 71 to amend the Class E airspace area at Allentown, PA. A GPS RWY 7 SIAP has been developed for the Allentown Queen City Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Allentown, PA [Revised]

Lehigh Valley International Airport, PA
(lat. 40°39′11″ N., long. 75°26′24″ W.)
LEEHI LOM
(lat. 40°35′09″ N., long. 75°32′58″ W.)
Allentown Queen City Municipal Airport, PA
(lat. 40°34′13″ N., long. 75°29′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Lehigh Valley International Airport and within 7.5-mile radius of Allentown Queen City Airport and within 3.1 miles north and 5 miles south of the Lehigh Valley International Airport localizer southwest course extending from the LEEHI LOM to 10 miles southwest of the LOM, excluding that portion that coincides with the Easton, PA, and Quakertown, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on October 7, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–29350 Filed 11–5–97; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 091–4050b ; FRL–5918–3]

Air Quality Implementation Plans; Approval and Promulgation: Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to correct an interim final rule, which was published on January 28, 1997, regarding EPA conditional approval of Pennsylvania's enhanced inspection and maintenance (I/M) program. This action pertains to the consequences in the event that the Pennsylvania enhanced I/M program failed to commence per the deadlines set forth in EPA's interim final rule. EPA is taking this action for the purposes of consistency with rulemaking actions EPA has since taken on other states' inspection and maintenance programs. In the Final Rules section of this **Federal Register**, EPA is making this correction to the Commonwealth's January 28, 1996 conditional SIP approval by issuing a direct final rule without prior proposal because the Agency views this correction as a noncontroversial SIP revision. Thus, EPA anticipates no adverse comments. A detailed explanation of this correction is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by December 8, 1997.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section (Mailcode 3AT21), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Relevant documents are also available at the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, at (215) 566–2176, or in writing at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 28, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 97–29389 Filed 11–5–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–5917–8]

Regulation of Fuels and Fuel Additives: Proposed Minor Revisions to Selected Recordkeeping and Enforcement Provisions Under the Regulation of Deposit Control Gasoline Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to revise certain requirements in its program for the use of detergent additives in gasoline. Under the current regulations, information on the oxygenate content of the gasoline must always be included in the required product transfer documents. To avoid unnecessary disruption to the gasoline distribution system, EPA is proposing to remove this requirement. A party who wants to use a detergent additive that is restricted in use with respect to oxygenates would be responsible for determining the oxygenate content of the gasoline involved. This proposal would continue to ensure that detergents with oxygenate restrictions are used in compliance with such restrictions, and would avoid the unnecessary disruption to the gasoline distribution system which would occur under the current regulations. For certain transfers of base gasoline, EPA is also proposing to allow the use of product codes in lieu of regulatory warning language concerning applicable

limitations on the sale and use of such gasolines.

These proposals are expected to provide industry additional flexibility, while ensuring the proper use of use-restricted detergents and base gasoline. There are no new information collection requirements accompanying these proposed changes. These proposals will not affect the air quality benefits from EPA's detergent additive program.

In the final rules section of this **Federal Register**, EPA is also promulgating a direct final rule without prior proposal, which will remove the requirement addressed in this NPRM, that mandates that information on the oxygenate content of transferred gasoline must be included in the required product transfer documents. It is not expected that the deletion of this requirement through the direct final rule will be controversial or that it will elicit negative comments. No detergents are presently certified with restricted oxygenate-use that would require the knowledge of gasoline oxygenate content for proper use. Further, the issue of the best means of acquiring oxygenate information to ensure proper additization is being addressed with notice and an opportunity to comment within the context of this NPRM. However, if EPA does receive adverse comments or a request for a public hearing on the direct final rule, it will be withdrawn and all comments received on it will be addressed in the subsequent final rule to be based on this NPRM. EPA will not institute a second comment period on this NPRM if the direct final rule is withdrawn. Any parties interested in commenting on this issue should do so at this time.

DATES: Comments on this NPRM will be accepted until December 8, 1997. Additional information on the comments procedure can be found under ''Public Participation'' in the **SUPPLEMENTARY INFORMATION** Section of this document.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–91–77, at the following address: Air Docket Section (LE–131), room M–1500, 401 M Street SW, Washington, DC 20460; phone (202) 260–7548; fax (202) 260–4000. The Agency also requests that a separate copy be sent to the contact person listed below. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m. Monday through Friday, except on government holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying docket materials.

This NPRM is also available electronically on the day of publication from the Office of the Federal Register internet Web site listed below. A prepublication electronic copy of this notice is also available from the EPA Office of Mobile Sources Web site listed below. This service is free of charge, except for any cost that you already incur for internet connectivity.

Federal Register Web Site:

http://www.epa.gov/docs/fedrgstr/EPA–AIR/

(Either select desired date or use Search feature.)

Office of Mobile Sources Web Site:

http://www.epa.gov/OMSWWW/

(Look in ''What's New'' or under the specific rulemaking topic.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

FOR FURTHER INFORMATION CONTACT: Judith Lubow, U.S. EPA, Office of Enforcement and Compliance Assurance, Western Field Office, 12345 West Alameda Parkway, Suite 214, Lakewood, CO 80228; Telephone: (303) 969–6483, FAX (303) 969–6490.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Regulated Entities

Entities potentially regulated by this action are those involved with the production, distribution, and sale of gasoline and gasoline detergent additives. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Gasoline refiners and importers, Gasoline terminals, Detergent blenders, Gasoline truckers, Gasoline retailers and wholesale purchaser-consumers, and Detergent manufacturers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 80.161(a), the detergent certification requirements in § 80.161(b), the program controls and prohibitions in § 80.168, and other related program requirements in Subpart G, title 40, of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Introduction

Section 211(l) of the Clean Air Act (''CAA'') requires that, by January 1, 1995, all gasoline must contain detergent additives to prevent the accumulation of deposits in motor vehicle engines and fuel supply systems. This CAA section also requires EPA to promulgate specifications for the detergent additives. Detergent additives prevent the accumulation of engine and fuel supply system deposits that have adverse effects on vehicle emissions as well as on fuel economy and driveabilty.

In response to section 211(l)'s requirements, EPA published a Notice of Proposed Rulemaking (''NPRM'') on December 6, 1993 (59 FR 64213) proposing a detergent additives regulatory program. The detergent program was finalized in two parts. Regulations for the interim detergent program, requiring the use of detergent additives in gasoline but not mandating specific detergent efficiency testing, were published on October 14, 1994 (59 FR 54678). Regulations for the detergent certification program, mandating the use of certified detergents with specified detergent efficiency testing, were published on July 5, 1996 (61 FR 35310).

One important implementation issue that has arisen since the publication of the detergent certification rule concerns

the requirement that the product transfer documents (PTDs) for gasoline transfers must identify all oxygenates found in the gasoline. Members of the gasoline refining and distribution industry informed EPA that this requirement's implementation would, as an unintended consequence, significantly disrupt gasoline distribution.[1]

For the reasons described below, EPA exercised its enforcement discretion and announced by letter to the American Petroleum Institute (''API'') that it would temporarily not enforce the PTD oxygenate identification requirement pending resolution of the issue through a rulemaking or until September 3, 1997, whichever occurrence came first.[2] The Agency reserved the right to rescind the exercise of this enforcement discretion if it determined that restricted-use detergents were actually being certified or that the PTD oxygenate identification requirements otherwise became appropriate. The Agency further advised that if violations involving the improper use of oxygenate-restricted detergents occurred, parties wishing to successfully assert an affirmative defense to liability for such violations might need to provide information establishing the appropriate oxygenate content of the gasoline in question. Subsequently, EPA extended this exercise of enforcement discretion until implementation of the direct final rule removing the PTD oxygenate requirement (which is associated with this NPRM), or until December 31, 1997, whichever occurrence came first.[3]

A second issue about the detergent program's PTD requirements, concerning the use of product codes, also arose since publication of the certification rule. The detergent program's two PTD implementation issues, plus the Agency's proposed regulatory solutions to these issues, will be discussed below.

III. Identification of Specific Oxygenate Content on Gasoline Product Transfer Documents (PTDs)

A. Background

The gasoline detergent additive program requires all regulated parties transferring products controlled under the program to provide to the transferee PTDs giving pertinent information about the products transferred. (40 CFR 80.158 and 80.171) The products subject to the detergent program PTD requirements are gasoline, detergent additives, and additized components, such as ethanol, which are blended into gasoline after the refinery process (additized post-refinery components, or ''PRC''). For transfers of these regulated products, the PTDs must identify the parties to the transfer, the product being transferred, and appropriate warning information about regulatory requirements.

One requirement is that PTDs for transferred gasoline must identify all oxygenates and PRCs contained in the gasoline. Further, if the gasoline is comprised of commingled fuels, all oxygenates and PRCs in the fuels comprising the commingled product must be identified. (40 CFR 80.158(a)(5) and 80.171(a)(5)) The purpose of this identification requirement is to alert the parties receiving the gasoline about the oxygenates and PRCs in the received product. This information would be useful to the recipient because, under the detergent certification program, parties may choose to additize gasoline with a detergent whose certification is restricted for use only with a specific oxygenate or no oxygenate, or, in the case of fuel-specific certified detergents, for use in gasoline without PRCs. Thus, parties choosing to use such restricted-use detergents must know the oxygenate or PRC (''oxygenate'') content of the gasoline they intend to additize with these detergents. The PTD oxygenate identification requirement was intended to provide such information for the transferred gasoline.

In creating this identification requirement, the Agency was not aware that many parties did not know the specific oxygenate content of the gasoline they were transferring. EPA has since learned that, under typical industry practice prior to this requirement, parties could and did commingle gasolines without knowledge of what (if any) specific ethers (a type of oxygenate) were present. Under the interim detergent rule's PTD requirements, no information about the oxygenate content of base gasoline was required. Parties were thus typically unaware of the specific ether content (in type(s) and concentration) of commingled gasoline they received or possessed themselves. To comply with this new oxygenate identification requirement and to become knowledgeable about the ether status of their gasoline, parties would have to ascertain the ether content of received gasoline (which would be the imposition of a new practice), stop commingling gasolines with different ether contents, or start testing all batches to determine such content. In any of these scenarios, gasoline distribution as presently practiced would be significantly disrupted.

It was never EPA's intention to disrupt gasoline distribution practices through the imposition of this PTD oxygenate identification requirement. Consequently, the Agency temporarily suspended enforcement of this PTD requirement.

B. Proposal

EPA does not believe that the benefits from the PTD requirement of providing oxygenate information to those parties who might choose to use oxygenate-restricted certified detergents warrants the resulting disruption to the gasoline distribution system. Therefore, the Agency is now proposing a regulatory change in the detergent program which would eliminate the requirement that PTDs for gasoline must identify the oxygenates found in the transferred product. Instead, a new requirement would take its place, that those detergent-blending parties wishing to use oxygenate-restricted detergents must maintain documentation fully identifying the oxygenate content of the fuel into which the detergent was blended, as evidence that the fuel complied with the detergent's oxygenate use restriction.

Under this proposal, a detergent blender could use different types of documentation to comply with this new requirement. Examples of such documentation would be PTDs or other written statements from suppliers fully identifying the oxygenate content of the received fuel; test results of oxygenate content, either of its own or from suppliers; or contractual agreements with suppliers establishing the oxygenate content of the received fuel.

The proposed modification of the PTD requirement would not change the existing requirement that detergent blenders use oxygenate-restricted detergents only in fuel which complies with the restriction. The new requirement would merely substitute a range of alternative documentation for the formerly required PTD information provided by the supplier, that could be used to help a party establish proper usage of oxygenate-restricted detergent. Therefore, adoption of this proposal would not impose an additional information collection requirement, but rather would refocus the existing requirement only on those parties who have need of information on gasoline oxygenate content.

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[1] Letter to Judith Lubow, Office of Enforcement and Compliance Assurance (OECA), EPA, from C.J. Krambuhl, Director, Manufacturing, Distribution, and Marketing, American Petroleum Institute (API), August 14, 1996, Docket item VII-D–01.

[2] Letter to C.J. Krambuhl, API, from Steven A. Herman, Assistant Administrator, OECA, EPA, August 28, 1996, Docket item VII-C–01.

[3] Letter to C.J. Krambuhl, API, from Steven A. Herman, Assistant Administrator, OECA, EPA, September 4, 1997, Docket item VII-C–02.

EPA was advised by the Independent Fuel Terminal Operators Association (IFTOA) of a concern about this proposed amendment.[4] According to IFTOA, if suppliers will no longer be required to identify on PTDs the oxygenate content of transferred gasoline, then detergent blenders wishing to use potentially less expensive oxygenate-restricted detergents might be forced to test each batch of gasoline. IFTOA believed that such testing would be necessary to establish compliance with the detergent's oxygenate restriction. According to this commenter, these tests might be prohibitively expensive for small detergent blenders. This party asserted it was inequitable to place the entire burden of establishing oxygenate content on the fuel's end-user.

The Agency believes that its proposal, as stated, is the most appropriate and equitable means of ensuring proper oxygenate content of product blended with oxygenate-restricted detergents, while limiting disruption to the gasoline distribution system. The Agency's proposal places the burden of procuring oxygenate information only on those parties, self-selected, who will choose to use these restricted detergents, not on the entire industry. In addition, although existing data indicates that oxygenates increase gasoline deposit forming tendency (severity) and that different oxygenates types might differ in the magnitude of their impact on fuel severity, EPA has no specific information on whether this will result in the use of oxygenate restricted detergents. Since there are many generic detergents available that are not oxygenate use-restricted, parties not wishing to meet the documentation burden by performing oxygenate testing could also choose to use non-oxygenate restricted detergents.

In addition, self-performed oxygenate testing is only one of several ways that a detergent blender could use to comply with the proposed oxygenate identification requirement. Other means specifically approved by the proposed regulation include obtaining full information about oxygenate content from the gasoline supplier, and having a contract with the supplier which establishes the oxygenate content of the supplied gasoline. Use of these alternative methods would generally preclude the need for oxygenate testing by the detergent blender itself.

For these reasons, the Agency does not believe that the proposed removal of the PTD oxygenate identification requirement puts an unfair burden on end-users of oxygenate-restricted detergents. On the contrary, the proposed oxygenate documentation requirement regarding the volumetric accounting reconciliation records (VAR) maintained by detergent blenders, which would only be triggered when an oxygenate-restricted detergent is being used by the blender, seems the most equitable means of identifying oxygenates while ensuring proper additization with oxygenate-restricted detergents. However, the Agency is interested in receiving comments from interested parties on any other reasonable procedure that would equitably ensure proper oxygenate identification and resultant additization compliance for oxygenate-restricted detergents, while limiting disruption to the gasoline distribution system.

IV. Product Codes as Substitutes for Warning Language on Certain Base Gasoline PTDs

A. Background

It is common practice in the petroleum industry to use product codes on commercially prepared transfer documents to provide information about the product being transferred. Industry uses these product codes to save space on the transfer documents, which typically provide a great deal of information. The interim detergent rule did not address the use of product codes or other non-regulatory language as substitutes for required regulatory language in fulfilling PTD requirements. In response to industry comments, the interim program was amended to include a provision similar to one in the certification program which addresses this issue. In most instances, the requirements under both the certification and interim programs permit the use of product codes or other non-regulatory language to be substituted for required product identification information, provided certain accuracy safeguards are met, such as that the codes are clear, standardized, and have been explained to downstream parties. (40 CFR 80.158(c) and 80.171(b))

The requirements under interim and certification programs do not, however, permit the use of product codes or other non-regulatory language to be used in place of required warning language about non-additized, base gasoline. The required warning language, found in 40 CFR 80.158(a)(6) and 80.171(a)(6), informs the transferee in specified language that the base gasoline either is not for sale to the ultimate consumer, or is for research and development purposes only. At the time the certification rule was published, the Agency believed that these warnings were too important to be the subject of coded language substitutions.

After the issuance of the final certification rule, the Agency was notified by Colonial Pipeline that the regulatory prohibition against using product codes to substitute for the base gasoline language warning against the sale of the product to the ultimate consumer was burdensome and was not necessary for transfers between upstream parties.[5] This commenter stated that its upstream customers were familiar with product code usage and would not be confused by the substitution of product codes for the base gasoline warning language. This commenter believed that providing the warning language in addition to providing the base gasoline product code was redundant and unnecessarily wasteful of needed PTD space.

B. Proposal

Upon consideration of this comment, the Agency now agrees that the prohibition against substituting a product code for the required base gasoline warning language is not necessary for upstream bulk transfers of ordinary base gasoline which is not subject to the research and development exemption. The Agency agrees that upstream parties, long accustomed to the use of product codes to identify product information, should find such codes satisfactory conveyors of the needed base gasoline information. This is especially true since gasoline is almost always unadditized before it reaches the truck rack terminal, so confusion about its status is unlikely.

However, the Agency is still concerned that the lack of such clear warning language on PTDs for downstream custody transfers of unadditized product to truck carriers, retail outlets, or wholesale purchaser-consumer facilities (WPCs), might cause confusion about product transfers and might result in mis-use of the unadditized product. Agency enforcement experience has also shown that such downstream parties are not always knowledgeable about the meaning of product codes on received PTDs. Further, the Agency continues to believe that base gasoline being used for

[4] Memorandum to the Air Docket from Judith Lubow, OECA, entitled, ''8/28/1996 EPA Phone Conversation with Andrea Grant of the Independent Fuel Terminal Operators Association'', Docket Item VII–E–01.

[5] Memorandum to the Air Docket from Judith Lubow, OECA, entitled, ''10/24/1996 and 12/2/1996 Phone Conversations with J.E. Brown of Colonial Pipeline'', Docket Item VII–E–02.

research and development purposes, being a special category of product exempt from the ordinary requirements of the detergent program, must continue to be identified as such in clear language.

Therefore, the Agency is today proposing that product codes and other non-regulatory language may be used to substitute on PTDs for the required base gasoline warning language, with two exceptions: (1) transferors must continue to provide the regulatory warning language against sale to the ultimate consumer on PTDs for product custody transfers to truck carriers, retail outlets, or WPCs; and (2) the warning language as to exclusive research use must continue to be provided on PTDs for all transfers of research base gasoline. The Agency believes that this proposal will lessen paperwork burdens on the upstream parties who would not be confused by the product codes, and will maintain the specific warning language requirement for downstream parties most in need of seeing the exact language, and for all transfers of base gasoline for research purposes.

V. Public Participation

EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on all aspects of this proposal from all interested parties, including small businesses. Whenever applicable, full supporting data and detailed analysis should be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the EPA Air Docket, Docket No. A–91–77 (see **ADDRESSES**). Comments on this notice will be accepted until the date specified in **DATES**. EPA has not planned a public hearing to discuss the issues raised in this proposal.

Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments, and clearly label it ''Confidential Business Information''. Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket. Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

VI. Environmental and Economic Impacts

The proposed revisions to the product transfer document (PTD) requirements would provide an equal degree of assurance to the current requirements that specially-certified detergent additives would only be used in gasoline stocks for which these detergents are certified for use. Therefore, the proposed requirements are not expected to impact the environmental benefits of the detergent program.

Under the first proposal, documentation on the specific oxygenate content of gasolines is only required to be maintained by those parties who have a direct interest in such information to support their voluntary use of specially-certified oxygenate-restricted detergents in that gasoline. It would no longer be required that all regulated parties transferring gasoline must indicate gasoline oxygenate content on the PTD for the product. Adoption of this proposal would avoid the potentially significant disruption of the current gasoline distribution system which might result from the current regulatory requirement of PTD oxygenate identification for all transfers of gasoline.

Establishing the oxygenate information as proposed is not expected to result in significant economic hardship to downstream parties who wish to voluntarily use oxygenate-restricted detergents. Placing the responsibility of establishing information on the specific oxygenate content of gasoline only on such detergent blending parties will eliminate unnecessary costs that would otherwise be incurred by others in the distribution system.

The second proposed change to the PTD requirements would provide industry additional flexibility by permitting the use of product codes rather than the currently-required regulatory warning language on PTDs for certain transfers of base gasoline. EPA expects that adoption of this proposal would decrease the cost of producing and maintaining PTDs. Based on the above discussion, EPA expects that adoption of the proposed requirements would result in an overall reduction in the economic burden of the regulation.

VII. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, EPA has determined that the proposed modifications to the regulation of deposit control additives contained in today's notice do not meet any of the criteria listed above, and therefore do not constitute a ''significant regulatory action''.

B. Impact on Small Entities

EPA has determined that the proposed modifications to the regulation of deposit control additives contained in today's notice would not have a significant economic impact on a substantial number of small entities, and that it is therefore not necessary to prepare a regulatory flexibility analysis in conjunction with this proposal.

Under the proposed requirements in today's notice, rather than requiring all parties in the gasoline distribution system to report the specific oxygenate content of gasoline on product transfer documents as under the current requirements (which would typically require testing for oxygenates and would disrupt current gasoline commingling practices), only those parties who wish to voluntarily take advantage of the potential cost savings from the use of specially-certified oxygenate-restricted detergents would be required to produce such information. A detergent blender who does not wish to incur this requirement could use any generic-certified detergent (i.e., detergents that do not have use restrictions).

Other proposed changes to the product transfer document (PTD) requirements would provide industry more flexibility by allowing the use of product codes rather than regulatory

warning language for certain upstream transfers of base gasoline not used for research purposes. This added flexibility is expected to decrease the cost of producing and maintaining PTDs for most regulated parties who transfer base gasoline. Based on the above discussion, EPA expects that adoption of the proposed requirements in today's notice would result in a reduction of the economic burden of the regulation for many parties and would not significantly increase the economic burden of compliance for any regulated party, including small entities.

C. Paperwork Reduction Act

The proposed actions in today's notice do not impose any new information collection burden. The first proposal would eliminate the existing requirement that product transfer documents (PTDs) for gasoline must identify the oxygenates present. Under the proposal, a range of alternative documentation could be used by the detergent blender to help establish the specific oxygenate content of gasoline in order to allow the optional use of oxygenate-restricted detergents rather than generic detergents (which do not have oxygenate restrictions). No new information collection requirements would result from implementation of this proposal. To the contrary, the proposed change would eliminate a compliance burden from the majority of regulated parties, while continuing to allow blenders to choose to use oxygenate-restricted detergents.

The second proposal would allow greater flexibility to industry by allowing the use of product codes on certain non-research base gasoline PTDs rather than the currently required warning language. The information collection requirements associated with this provision would not change. The increased flexibility is expected to result in a reduced compliance burden.

The Office of Management and Budget (OMB) has previously approved the information collection requirements of the Regulation of Deposit Control Additives contained in 40 CFR Part 80 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0275(EPA ICR Numbers 1655–01, 1655–02, and 1655–03).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR documents may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (mail code 2136); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and/or OMB number in any correspondence.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed revisions to the Regulation of Gasoline Deposit Control Additives contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments. The proposed revisions impose no enforceable duties on any of these governmental entities. Nothing in the proposal would significantly or uniquely affect small governments. EPA has determined that the provisions in today's proposal do not contain Federal mandates that will result in expenditures of $100 million or more in any one year for the private sector. To the contrary, EPA expects the proposed changes would result in reduced compliance costs. EPA believes that the proposed regulatory changes represent the least costly, most cost-effective approach to addressing implementation concerns expressed by industry, while achieving the air quality goals of the gasoline detergent program.

VIII. Statutory Authority

The statutory authority for the proposed actions in this notice is granted to EPA by sections 114, 211(a), (b), (c), and (l), and 301 of the Clean Air Act as amended: 42 U.S.C. 7414, 7545 (a), (b), (c) and (l), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline detergent additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: October 30, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.158 is amended as follows:

a. Paragraph (a)(5) is removed.

b. Paragraphs (a)(6) through (a)(10) are redesignated as paragraphs (a)(5) through (a)(9).

c. Paragraph (c)(1) is revised to read as follows:

§ 80.158 Product Transfer Documents (PTDs)

* * * * *

(c) Use of product codes and other non-regulatory language.

(1) Product codes and other non-regulatory language may not be used as a substitute for the specified PTD warning language specified in paragraph (a)(6) of this section for custody transfers of base gasoline to truck carriers, retail outlets, and wholesale purchaser-consumer facilities or for transfers of exempt base gasoline to be used for research, development, or test purposes.

* * * * *

3. Section 80.170 is amended by adding a new paragraph (f)(7) to read as follows:

§ 80.170 Volumetric additive reconciliation (VAR), equipment calibration, and recordkeeping requirements.

* * * * *

(f) * * *

(7) If a detergent blender uses an oxygenate -or PRC-restricted certified detergent to additize fuel, documentation must be maintained by that blender fully identifying the oxygenate and/or PRC (as applicable) content of the fuel into which the oxygenate or PRC-restricted detergent was blended, so as to confirm or to substantially confirm that the fuel into which the restricted detergent was blended complied with the use restriction. Documentation which may be used to fulfill this requirement includes, but is not limited to: PTD(s) from the fuel supplier identifying all the oxygenates or PRC (as appropriate) in the fuel; test results identifying all the oxygenates or PRC (as appropriate) in the fuel; written contract language between the supplier and the blender establishing the complete oxygenate and/or PRC (as appropriate) content of the supplied fuel.

* * * * *

4. Section 80.171 is amended as follows:

a. Paragraph (a)(5) is removed.

b. Paragraphs (a)(6) through (12) are redesignated as paragraphs (a)(5) through (a)(11).

c. Paragraph(b)(1) is revised to read as follows:

§ 80.171 Product Transfer Documents (PTDs)

* * * * *

(b) Use of product codes and other non-regulatory language.

(1) Product codes and other non-regulatory language may not be used as a substitute for the PTD warning language specified in paragraph (a)(6) of this section for custody transfers of base gasoline to truck carriers, retail outlets, and wholesale purchaser-consumer facilities, or for transfers of exempt base gasoline to be used for research, development, or test purposes.

* * * * *

[FR Doc. 97–29390 Filed 11–5–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5916–7]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Browning-Ferris Industries—South Brunswick Landfill Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Browning-Ferris Industries—South Brunswick Landfill Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C 9601 *et seq.* EPA and the New Jersey Department of Environmental Protection (NJDEP) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before December 8, 1997.

ADDRESSES: Comments may be mailed to: Mary Anne Rosa, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway-19th Floor, New York, NY 10007–1866.

The deletion docket and other comprehensive information on this Site is available for viewing at the Browning-Ferris Industries—South Brunswick Landfill Site information repository at the following location: Town of South Brunswick Municipal Building, P.O. Box 190, Monmouth Junction, New Jersey 08852, (908) 329–4000.

FOR FURTHER INFORMATION CONTACT: Mary Anne Rosa, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway—19th Floor, New York, New York 10007–1866, (212) 637–4407.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region II announces its intent to delete the Browning-Ferris Industries—South Brunswick Landfill Site, which is located in South Brunswick Township, Middlesex County, New Jersey, from the NPL, which constitutes Appendix B of the NCP, 40 CFR part 300, and requests comments on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this Site until December 8, 1997.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA in consultation with NJDEP, shall consider whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

(iii)The remedial investigation has shown that the release of hazardous substances poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region II issued a Record of Decision (ROD) which documented the remedial action activities; (2) all appropriate responses under CERCLA

have been implemented as documented in the Final Close-Out Report dated September 1997; (3) the NJDEP concurred with the proposed deletion; (4) a notice has been published in the local newspaper and has been distributed to appropriate Federal, State and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (5) all relevant documents have been made available for public review in the local Site information repository.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management of Superfund sites. As mentioned in section II of this document, § 300.425 (e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

A. Site Background

The Site is located along New Road, approximately one-half mile northwest of U.S. Route 1, in Middlesex County, New Jersey. The landfill occupies an area of approximately 68 acres. A significant portion of the land surrounding the Site is wooded. It is owned by Browning-Ferris Industries (BFI) of South Jersey. The Site, which operated for more than 20 years as a solid waste landfill, accepted municipal refuse, pesticides, chemical wastes and hazardous wastes.

B. History

In June 1980, EPA conducted an investigation of the Site. The sampling results revealed elevated levels of volatile organic compounds in several on-site monitoring wells, as well as on-site surface water sampling locations.

The data from this sampling effort resulted in the Site being proposed for the Superfund NPL on December 1, 1982, and the Site was included on the NPL on November 1, 1983.

In April 1982, BFI and EPA entered into an agreement concerning the remedial efforts to be performed. The agreement was in the form of a Resource Conservation and Recovery Act (RCRA) Administrative Order on Consent (Index No. RCRA–700320101) which outlined the remedial approach.

C. Characterization

The remedial action activities, initiated in February 1983, consisted of the construction of a leachate collection/treatment system, slurry wall, multi-layer cap and gas venting system. The remedial action was completed in September 1985. EPA issued a Record of Decision on September 30, 1987, which affirmed that the remedial action undertaken was consistent with CERCLA, as amended, and to the extent practicable, the NCP.

A public availability session was conducted by EPA in August 1987 to discuss with the community the remedial actions implemented and the post-remedial environmental monitoring program. Public comments were received and addressed in the Responsiveness Summary portion of the September 30, 1987, Record of Decision.

D. Monitoring

The May 1993 EPA-approved Post-Remedial Environmental Monitoring Program (PREMP) Work Plan was designed to assess the effectiveness of the completed Remedial Action and evaluate off-Site migration of contaminants. The PREMP was conducted from May 1993 to January 1994 and included the collection of twenty-seven groundwater samples, thirty-four soil samples, eight surface water samples and twelve sediment samples. Post-remedial environmental monitoring indicated that volatile organic compounds (VOCs), semi-VOCs, and inorganic contaminant concentrations have decreased in surface water, groundwater, sediment and soil samples. Therefore, the results from this investigation document the effectiveness of the remedy and indicate there is no significant off-Site migration of contaminants. Although minimal groundwater contamination was detected in the southeastern portion of the Site in the area of monitoring well R–10, regulating the leachate collection system to induce inward gradients appears to have significantly reduced contamination. As part of the overall Site Operation and Maintenance Plan activities, EPA has required BFI to periodically evaluate the effectiveness of the leachate collection system and routinely monitor well R–10 and downgradient surface water quality to ensure the effectiveness of the remedy. The multi-layered cap has effectively reduced infiltration, as indicated by the significant reduction in the amount of leachate generation over time. The leachate collection system and slurry wall have reduced leachate levels within the landfill, resulting in inward hydraulic gradients over much of the Site. Historically, leachate was pre-treated to reduce iron concentrations in the effluent. BFI has been notified by the Stony Brook Regional Sewerage Authority (SBRSA) of a change in BFI's license classification from a Class 1 to Restricted Industrial User. BFI is no longer required to treat for iron. BFI discharges directly to the sanitary sewer line while still monitoring monthly per the requirements of the license issued by the SBRSA. Also, the gas venting system is operating in accordance with the existing NJDEP Air Pollution Control Program permit and a series of perimeter gas monitoring probes are periodically monitored. Project Managers from EPA and BFI conducted a Site inspection on September 12, 1995. The purpose of this inspection was to determine the current status of the Site and the adequacy of the Site cleanup. The remedial action, completed since September 1985, remains in place and is operating and functioning as designed.

E. Operation and Maintenance

The cleanup of the Site was performed in compliance with ''clean closure'' requirements and consistent with the Resource Conservation and Recovery Act of 1976, as amended, CERCLA, as amended, and to the extent practicable, the NCP. Pursuant to the 1989 Administrative Order, BFI has committed to performing Operation and Maintenance (O&M) activities at the Site. In August 1997, EPA approved the Site O&M Plan, which defines the long-term O&M activities for the Site. The O&M Plan addresses those activities required for controlling the groundwater gradient in the area of monitoring well R–10, maintaining the effectiveness of the response action, and monitoring Site conditions to determine the occurrence of any environmental threat. O&M activities include periodic inspections and maintenance of waste containment measures, periodic air, groundwater and surface water monitoring, certain institutional controls, periodic leachate collection and treatment measures, or any other activities necessary to ensure

the continued protection of public health and the environment.

F. Protectiveness

All the completion requirements for this Site have been met as described in the Final Close-Out Report (COR) dated September 1997. The Final COR documents the effectiveness of the post-remedial environmental monitoring and that the remedy (slurry wall, multi-layered cap, leachate collection system, gas venting system and installation of a Site security fence) remains protective. Site O&M activities will be performed by BFI, with EPA oversight.

EPA and NJDEP have determined that all appropriate Fund-financed responses under CERCLA at the Site have been completed, and that no further construction activities by responsible parties is necessary except for operation and maintenance requirements. EPA will be providing oversight of all operation and maintenance activities. Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available in the docket.

Dated: September 29, 1997.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–29150 Filed 11–5–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 679

[Docket No. 971015247–7247–01; I.D. 091597D]

RIN 0648-AK19

Fisheries in the Exclusive Economic Zone Off Alaska; Modify IFQ Survivorship Transfer Provisions

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulatory amendment to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off of Alaska. This action would modify the survivorship transfer provisions to allow heirs of deceased quota share (QS) or IFQ holders to receive such QS or IFQ by transfer and to transfer the resulting IFQs to any person eligible to receive IFQ for up to 3 years following the date of a QS holder's death. This action is necessary to extend survivorship privileges to other heirs in addition to surviving spouses and to allow such heirs to obtain pecuniary benefit from such IFQ. The intended effect of this action is to provide temporary financial relief for the heirs of QS holders.

DATES: Comments on the proposed rule and Regulatory Impact Review (RIR) must be received December 8, 1997.

ADDRESSES: Comments must be sent to the Chief, Fisheries Management Division, Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The fixed gear halibut and sablefish fisheries are managed by the IFQ Program, a limited access system for fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in and off of Alaska. Under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982 (Halibut Act), NMFS implemented the IFQ Program in 1995, on the recommendation of the North Pacific Fishery Management Council (Council), to reduce excessive fishing capacity in the fixed gear Pacific halibut and sablefish fisheries, while maintaining the social and economic character of these fisheries and the Alaskan coastal communities where many of these fishermen are based.

Restrictions in the IFQ Program foster the transfer of QS among fishermen qualified to fish the annual allocations of IFQ that QS generate. These restrictions are intended to discourage excessive consolidation and the acquisition of QS by investment speculators. Persons who are not qualified to receive IFQ may receive QS by transfer, but such QS would be restricted from generating IFQ that may be used to harvest IFQ halibut or sablefish.

The Council's approved IFQ Program authorizes temporary exceptions to the transfer restrictions. In 1996, on the authority of the transfer provisions in the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery and the Fishery Management Plan for the Bering Sea/Aleutian Islands Groundfish, NMFS implemented an exception to the transfer restrictions that grants temporary transfer privileges to the spouse of a deceased QS holder who receives QS by right of survivorship, but is otherwise unqualified to harvest IFQ (61 FR 41523, August 9, 1996). The exception allows the surviving spouse who receives QS or IFQ, first, to transfer any of the current year's IFQ for the duration of the allocation year and, second, to lease the total annual allocations of IFQ resulting from the QS transferred by right of survivorship for 3 calendar years from the date of the death of the deceased holder of QS or IFQ (§ 679.41(k)(2)).

In October 1996, the IFQ Industry Implementation Team recommended a proposal to extend the survivorship transfer provisions to heirs in a deceased QS holder's immediate family, in addition to a surviving spouse. In June 1997, the Council took final action to extend the survivorship transfer provisions to any individual who receives QS by right of survivorship.

This action would benefit heirs who were not initially issued QS or who are not IFQ crew members. Without meeting those criteria, individuals who receive QS by right of survivorship would be otherwise ineligible to receive IFQ. The new provision would allow an individual who receives QS by right of survivorship to transfer, for up to 3 years, the total IFQ resulting from that QS to anyone eligible to receive IFQ and thereby obtain pecuniary benefit from the QS for that period. The Council determined that 3 years would provide an heir with adequate time to resolve permanently any issues that may arise due to receiving QS or IFQ by right of survivorship, including subsequent transfers. Upon the death of a QS or IFQ holder, the Regional Administrator, upon application for transfer, would transfer QS or IFQ to an individual who demonstrates a right of succession to such QS or IFQ, through intestate or testate succession. The Regional Administrator, upon application for transfer, would transfer, for up to 3 calendar years following the date of death of an individual QS holder, IFQ from an individual who received the originating QS through intestate or testate succession to any person eligible to receive IFQ.

This action would also correct an error in the survivorship transfer regulations that resulted from the consolidation of regulations governing the EEZ off Alaska in 61 FR 31228 (June 19, 1997). In the consolidation of the regulations, the reference to paragraph (g)(2) in § 679.41(k) should have been revised to read (h)(2). This action would make the necessary revision to correct the oversight.

Classification

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act, clarifying a requirement that has previously been approved by OMB under Control Number 0648-0272. The proposed clarification states that a death certificate is one of the forms of substantiating evidence required upon the death of a quota share holder in order to transfer that quota share to an estate. The estimated response time for providing the substantiating evidence is 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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. Send comments on these or any other aspects of the collection of information to NMFS/Alaska Region (see **ADDRESSES**), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

The proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities:

The proposed change constitutes a minor regulatory amendment needed to extend the survivorship transfer provision (currently applicable to surviving spouses only) to heirs generally of a deceased quota share (QS) holder. This action would allow heirs who receive QS of Individual Fishing Quota (IFQ) by right of survivorship to transfer IFQ resulting from the inherited QS for 3 years from the date of the deceased QS holder's death, notwithstanding the IFQ Program's restrictions on transfers of IFQ.

This rule could potentially affect any small entity able to fish IFQ in the Alaska fisheries. Currently, 4,187 persons are eligible to fish IFQ in Alaska. Most of these are believed to be small entities. In addition, this rule could affect heirs of deceased QS holders. It is not possible to predict the extent to which such heirs might be considered small entities. Likewise, it is impossible to quantify the economic impact this proposed rule could have on small entities, because the impacts are speculative and depend on a variety of factors including the death of one or more current QS holders and the decision by one or more heirs to lease IFQ. However, to the extent that the proposed rule could impact small entities, the impact would be beneficial in that the result would be increased opportunity for leasing IFQ shares. Eligible fishermen who wanted to fish more shares would have increased opportunity to lease more shares, and heirs who otherwise would not be eligible to fish the IFQ would be able to recognize economic gain.

As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 31, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC zONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.41, paragraph (k) is revised to read as follows:

§ 679.41 Transfer of QS and IFQ

* * * * *

(k) Transfer to an heir.

(1) Upon the death of a QS or IFQ holder, the Regional Administrator, upon application for transfer, will transfer QS or IFQ to an individual who demonstrates a right of succession to such QS or IFQ, through intestate or testate succession.

(2) The Regional Administrator, upon application for transfer, will transfer, for up to 3 calendar years following the date of death of an individual QS holder, IFQ from an individual who received the originating QS through intestate or testate succession to a person eligible to receive IFQ under the provisions of this section, notwithstanding the limitations on the transfer of IFQ in paragraph (h)(2) of this section.

* * * * *

[FR Doc. 97–29382 Filed 11–3–97; 2:24 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 215
Thursday, November 6, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 31, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- **Farm Service Agency**

Title: Request for FSA County Committee Ballot and Declaration of Eligibility to Vote.

OMB Control Number : 0560—New.

Summary of Collection: Information will be collected from persons requesting eligibility to vote in county committee elections.

Need and Use of the Information: The information will be used to ensure as many eligible voters as possible receive an FSA County Committee election ballot.

Description of Respondents: Farms.

Number of Respondents: 5,000.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 400.

Emergency processing of this submission has been requested.

- **Food and Consumer Service**

Title: Quality Control Review Schedule.

OMB Control Number : 0584–0299.

Summary of Collection: The Quality Control Review Schedule collects both quality control and case characteristic data. The information needed to complete this form is obtained from the Food Stamp case record and State quality control findings.

Need and use of the Information: The information is used to monitor and reduce errors, develop policy strategies, and analyze household characteristic data.

Description of Respondents: State, Local or Tribal Government; Individuals or households; Federal Government.

Number of Respondents: 57,236.

Frequency of Responses: Recordkeeping; Recording: Weekly; Monthly.

Total Burden Hours: 61,499.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–29315 Filed 11–5–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–078–5]

Agency Information Collection Activities; OMB Approval Received

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Office of Management and Budget's approval of a collection of information contained in the Animal and Plant Health Inspection Service final rule amending the regulations for the humane treatment of dogs under the Animal Welfare Act by removing the provisions for tethering dogs as a means of primary enclosure.

FOR FURTHER INFORMATION CONTACT: Mr. Gregg Ramsey, APHIS Information Collection Coordinator, AIM, APHIS, suite 2C11, 4700 River Road Unit 103, Riverdale, MD 20737–1235, (301) 734–5682.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1997, we published in the **Federal Register** (62 FR 43272-43275, Docket No. 95–078–2) a final rule amending the regulations at 9 CFR parts 1 and 3, ''Humane Treatment of Dogs; Tethering.'' This rule contains information collection requirements. On October 3, 1997, the Office of Management and Budget (OMB) approved the collection of information requirements with respect to this final rule under OMB control number 0579-0093 (expires April 30, 2000).

Done in Washington, DC, this 30th day of October 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29322 Filed 11–5–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for Rural Housing Site Loans Policies, Procedures and Authorizations.

DATES: Comments on this notice must be received by January 5, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Carrie Schmidt, Loan Specialist, Single Family Housing Processing Division, RHS, U.S. Department of Agriculture, STOP 0783, 1400 Independence Ave., S.W., Washington, DC 20250–0783, Telephone (202) 690–0510.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1822–G, Rural Housing Site Loans, Policies, Procedures and Authorizations.

OMB Number: 0575–0071.

Expiration Date of Approval: March 31, 1998.

Type of Request: Extension of currently approved information collection.

Abstract: Section 523 of the Housing Act of 1949 as amended (Public Law 90–448) authorizes the Secretary of Agriculture to establish the Self-Help Land Development Fund to be used by the Secretary as a revolving fund for making loans on such terms and conditions and in such amounts as deemed necessary to public or private nonprofit organizations for the acquisition and development of the land as building sites to be subdivided and sold to families, nonprofit organizations and cooperatives eligible for assistance.

Section 524 authorizes the Secretary to make loans on such terms and conditions and in such amounts as deemed necessary to public or private nonprofit organizations for the acquisition and development of land as building sites to be subdivided and sold to families, nonprofit organizations, public agencies and cooperatives eligible for assistance under any section of this title, or under any other law which provides financial assistance for housing low and moderate income families.

RHS will be collecting information from participating organizations to insure they are program eligible entities. This information will be collected at the RHS field office. If not collected, RHS would be unable to determine if the organization would qualify for loan assistance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Public or private nonprofit organizations, State, Local or Tribal Governments.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 36.

Copies of this information collection can be obtained from the Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division at (202) 720–9734.

Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0743, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 25, 1997.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 97–29323 Filed 11–5–97; 8:45 am]

BILLING CODE 3410–XV–U

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, November 14, 1997, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of October 10, 1997 Meeting
III. Announcements
IV. Staff Director's Report
V. Regional Director's Discussion
VI. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 97–29485 Filed 11–4–97; 12:23 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[No. 97–BXA–9]

Decision and Order on Renewal of Temporary Denial Order

In the Matters of: Thane-Coat, Inc. 12725 Royal Drive, Stafford, Texas 77477; Jerry Vernon Ford, President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477; and with an address at 7707 Augustine Drive, Houston, Texas 77036; Preston John Engebretson, Vice-President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477; and with an address at 8903 Bonhomme Road, Houston, Texas 77074; Export Materials, Inc., 3727 Greenbrier Drive, No. 108, Stafford, Texas 77477; and Thane-Coat International, LTD., Suite C, Regent Centre, Explorers Way, P.O. Box F–40775, Freeport, The Bahamas, Respondents.

Background

On May 5, 1997, I entered an Order temporarily denying all United States export privileges to Thane-Coat, Inc.; Jerry Vernon Ford, president, Thane-Coat, Inc.; Preston John Engebretson, vice-president, Thane-Coat, Inc. (hereinafter collectively referred to as ''T–CF&E''), located in the State of Texas; Export Materials, Inc. (hereinafter referred to as ''EMI''), located in the State of Texas; and Thane-Coat International, Ltd. (hereinafter referred to as ''TCIL''), located in Freeport, the Bahamas.

T–CF&E, EMI and TCIL appealed the Temporary Denial Order hereinafter ''TDO'') to an Administrative Law Judge (hereinafter the ''ALJ''). On June 11, 1997, the ALJ recommended to the Under Secretary for Export Administration that the TDO be affirmed. The Under Secretary affirmed the TDO on June 20, 1997. T–CF&E, EMI and TCIL appealed the issuance of the TDO in the U.S. District Court in the Southern District of Texas.

The TDO will expire on November 1, 1997. Pursuant to Section 766.24 of the Export Administration Regulations (15 C.F.R. parts 730–774 (1997)) (hereinafter the ''Regulations''), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app §§ 2401–2420 (1991 & Supp. 1997)) (hereinafter the ''Act''),[1] the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA'') has requested that I renew the TDO against T–CF&E, EMI and TCIL for an additional 180 days.

T–CF&E, through its attorneys, opposed the Department's request and sought a hearing as authorized by Section 766.24(d)(3)(i) of the Regulations. The hearing was held on October 28, 1997.

Neither EMI nor TCIL filed written submissions opposing renewal of the TDO.

Discussion

The sole issue presented is whether the TDO should be renewed to prevent an imminent violation of the Regulations. A violation may be ''imminent'' either in time or likelihood. To establish grounds for a temporary denial order, BXA may show either that a violation is about to occur or that the general circumstances of the matter under investigation demonstrate a likelihood of future violations. BXA may show that the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent. BXA may show that it is appropriate to give notice to companies in the United States and abroad to cease dealing with the persons in U.S.-origin goods and technology in order to reduce the likelihood that the persons under investigation or charges continue to export or acquire abroad such goods and technology, risking subsequent disposition contrary to export control requirements. Lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation. BXA may request renewal of a TDO if BXA believes the TDO is necessary in the public interest to prevent an imminent violation. 15 CFR 766.24.

In its request, BXA states that, as a result of an ongoing investigation, it has reason to believe that, during the period from approximately June 1994 through approximately July 1996, Thane-Coat, Inc., through Ford and Engebretson, and using its affiliated companies, TCIL and EMI, made approximately 100 shipments of U.S.-origin pipe coating materials, machines and parts to the Dong Ah Consortium in Benghazi, Libya. BXA asserts the approximate value of these shipments was $35 million. These items were used in coating the internal surface of prestressed concrete cylinder pipe for the Government of Libya's Great Man-Made River Project, which is ongoing. BXA's investigation gives it reason to believe that T–CF&E, EMI and TCIL employed a scheme to export U.S.-origin products from the United States, through the United Kingdom or Italy, to Libya, a country subject to a comprehensive economic sanctions program, without the authorizations required under U.S. law and regulations, including the Regulations.

BXA believes that the violations T–CF&E, EMI and TCIL are suspected of having committed were significant, deliberate, covert and/or likely to occur again unless a temporary denial order naming T–CF&E, EMI and TCIL is issued. Additionally, BXA believes that a temporary denial order is necessary to give notice to companies in the United States and abroad that they should cease dealing with T–CF&E, EMI and TCIL in export-related transactions involving U.S.-origin goods.

Counsel for T–CF&E argues that BXA has not shown that a TDO is needed to prevent an imminent violation of law and that evidence of past alleged violations of the Act do not show that a future violation is imminent.[2] Counsel's arguments are not persuasive.

Counsel argues that the TDO is void and should not be renewed because the Act has expired. I do not accept Counsel's argument.

Counsel argues that evidence of the violations upon which BXA bases its request is contained in privileged communications. Counsel further argues that privileged communications may not be considered in deciding whether to renew the TDO. The showing by BXA, that renewal of the TDO is appropriate, is compelling even without the communications to which counsel claims privilege. I do not concur in Counsel's argument.

Counsel argues that the TDO is over-broad and, if renewed, should be narrowed. In its showing, BXA described an elaborate international scheme put in place by T–CF&E, EMI and TCIL. BXA argues that, if the TDO is not renewed, T–CF&E can establish a similar scheme and commit additional violations. Based on the showing by BXA, the scope of the TDO is in the public interest to prevent additional violations. BXA's argument is persuasive.

Counsel offers declarations by Jerry Vernon Ford, president of Thane-Coat, Inc., and Preston John Engebretson, vice-president of Thane-Coat, Inc. Each certified, under penalty of perjury, that neither he nor Thane-Coat, Inc. will enter into any contract, agreement, understanding, or arrangement with any other party to sell, export, ship or transmit any coating products, of any kind, to any entity in any country subject to a general embargo, as indicated in Section 746.1(a) of the Regulations. Messrs. Ford and Engebretson, on behalf of themselves and Thane-Coat, Inc., also consent to pre-export and post-export monitoring by BXA of all export transactions entered into by Thane-Coat.

The pledge by Messrs. Ford and Engebretson, to comply with Section 746.1(a) of the Regulations, is not persuasive in light of the showing by BXA.

Counsel requests that BXA produce documents related to the matters associated with transactions to Libya involving T–CF&E, EMI and TCIL. At this point, this matter is not ripe for discovery.

Findings

Based on the record in this matter, including the submissions of the parties and the oral arguments at the hearing held on October 28, 1997, I find that it is necessary to renew the order temporarily denying the export privileges of Thane-Coat, Inc.; Jerry Vernon Ford; Preston John Engebretson; Export Materials, Inc.; and Thane-Coat International, Ltd. I find such renewal is in the public interest to prevent an imminent violation of the Regulations

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), and August 14, 1996 (3 C.F.R., Comp. 298 (1997)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1997)).

[2] ''Opposition To Request for Renewal of Order Temporarily Denying Export Privileges'', dated October 24, 1997.

and to give notice to companies in the United States and abroad to cease dealing with these entities in goods and technical data subject to the Regulations. I find such renewal is in the public interest in order to reduce the substantial likelihood that they will engage in activities which are in violation of the Regulations.

Order

Accordingly, it is hereby ordered that:

All outstanding validated export licenses in which Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas; Jerry Vernon Ford, president, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, with an address at 7707 Augustine Drive, Houston, Texas 77036; Preston John Engebretson, vice-president, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, with an address at 8903 Bonhomme Road, Houston, Texas 77074; Export Materials, Inc., 3727 Greenbrier Drive, No. 108, Stafford, Texas 77477; and/or Thane-Coat International, Ltd., Suite C, Regent Center, Explorers Way, P.O. Box F–40775, Freeport, The Bahamas, appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all privileges of T–CF&E, EMI and TCIL of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Thane-Coat, Inc., and all of its successors or assigns, officers, representatives, agents, and employees when acting on its behalf; Jerry Vernon Ford; Preston John Engebretson; Export Materials, Inc., and all of its successors or assigns, officers, representatives, agents, and employees when acting on its behalf; and Thane-Coat International, Ltd., and all of its successors or assigns, officers, representatives, agents, and employees when acting on its behalf, may not directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported, or to be exported, from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any of the denied persons any item subject to the Regulations;

B. Take any action that facilitates the acquisition, or attempted acquisition, by any of the denied persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby any of the denied persons acquires, or attempts to acquire, such ownership, possession or control;

C. Take any action to acquire from, or to facilitate the acquisition or attempted acquisition from, any of the denied persons of any item subject to the Regulations that has been exported from the United States;

D. Obtain from any of the denied persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States;

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by any of the denied persons, or service any item, of whatever origin, that is owned, possessed or controlled by any of the denied persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

After notice and opportunity for comment, as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to any of the denied persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, may also be made subject to the provisions of this Order.

This order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the Regulations, T–CF&E, EMI, and/or TCIL may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

This order is effective immediately and shall remain in effect for 180 days.

In accordance with Section 766.24 of the Regulations, the Department may seek renewal of this TDO by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this TDO by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received no later than seven days before the expiration of this order.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register**.

Entered this 31st day of October 1997.

Frank W. Deliberti,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 97–29377 Filed 11–5–95; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet on Tuesday, December 2 from 8:30 a.m. to 5:00 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization,

its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. On December 2, 1997, the agenda will include an update on NIST programs; presentations on the NIST Advanced Technology Program (ATP), the Manufacturing Extension Partnership (MEP); a laboratory tour; and discussions on the Institute budget and staffing of management positions. Discussions on the NIST budget, including funding levels of the MEP and ATP programs scheduled to begin at 8:30 a.m. and to end at 9:00 a.m. on December 2, 1997; and staffing of management positions at NIST scheduled to begin at 4:30 p.m. and to end at 5:00 p.m. on December 2, 1997, will be closed.

DATES: The meeting will convene on December 2, 1997 at 8:30 a.m. and will adjourn at 5:00 p.m. on December 2, 1997.

ADDRESSES: The meeting will be held in the Employees Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on July 25, 1997, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Manufacturing Extension Partnership and the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: October 30, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–29381 Filed 11–5–97; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

October 31, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 7, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66263, published on December 17, 1996). Also see 61 FR 59420, published on November 22, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 1997.

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 18, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on November 7, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC):

Category	Adjusted twelve-month limit [1]
Sublevels in the aggregate	
218	6,352,800 square meters.
225	11,718,341 square meters.
300/301	8,615,858 kilograms.
338/339/638/639	1,801,932 dozen.
347/348	1,234,657 dozen.
410/624	11,446,488 square meters of which not more than 2,950,338 square meters shall be in Category 410.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29376 Filed 11–5–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Amendments to the Termination of Trading Provision for Expiring E-Mini Standard & Poor's 500 Stock Price Index Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to the termination of trading provision for expiring E-Mini Standard & Poor's 500 Stock Price Index futures and futures option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME) has submitted proposed amendments to the termination of trading provision for

expiring the E-Mani Standard & Poor's 500 Stock Price Index (E-Mini S&P 500) futures and futures option contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before November 21, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the termination of trading provision of the E-Mini S&P 500 futures and futures option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Michael Penick of the Division of Economic Analysis, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581, telephone 202–418–5279. Facsimile number: (202) 418–5527. Electronic mail: mpenick@cftc.gov.

SUPPLEMENTARY INFORMATION: Under current rules, trading in expiring CME E-Mini S&P 500 futures and options terminates at the close of the regular trading session (*i.e.,* 4:15 p.m. Eastern time) on the business day immediately preceding the day scheduled for determination of the final settlement price.[1] That is, trading in expiring futures contracts ceases on the business day before the third Friday of the contract month. Under the proposal, trading in expiring futures and options would terminate on the following day—*i.e.,* at the opening of trading at the New York Stock Exchange (9:30 a.m. Eastern time) on the third Friday of the contract month, which is the day scheduled for determination of the final settlement price. The Division requests comment on this proposed change to the termination of trading provision.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CME should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 31, 1997.

John R. Mielke,

Acting Director.

[FR Doc. 97–29356 Filed 11–5–97; 8:45 am]

BILLING CODE 6351–01–M

[1] The final settlement price is a special opening quotation of the S&P 500 index and reflects the opening prices of the component stocks.

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to Minneapolis Grain Exchange Barley Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments.

SUMMARY: The Minneapolis Grain Exchange (MGE or Exchange) has proposed amendments to Minneapolis Grain Exchange barley futures contract. The primary amendment will change the par delivery location for barley from Tulare, California, to Portland, Oregon. Another amendment will provide the issuers of barley shipping certificates the opportunity to declare unit train delivery. The proposal was submitted under the Commission's 45-day Fast Track procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before November 21, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the MGE barley.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov.

SUPPLEMENTARY INFORMATION: The proposed amendments were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments (62 FR 10434). Under those procedures, the proposal, absent any contrary action by the Commission, may be deemed approved at the close of business on December 15, 1997, 45 days after receipt of the proposal. In view of the limited review period provided under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under ''What's Pending''.

Other materials submitted by the MGE in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of

Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the MGE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 31, 1997.

John R. Mielke,

Acting Director.

[FR Doc. 97–29355 Filed 11–5–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DOD.

ACTION: Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 5, 1998.

ADDRESSES: Written comments and recommendations on the information collection should be sent to TRICARE Support Office, Program Development Branch, U.S. Army Garrison, Fitzsimons, ATTN: Tariq Shahid, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call TRICARE Support Office, Program Development Branch, at (303) 361–1401.

Title; Associated Form; and OMB Number: Reimbursement Information, Psychiatric Residential Treatment Centers Serving Children and Adolescents, TRICARE Form 771, OMB Number 0704–0295.

Needs and Uses: The information collection requirement is necessary to obtain individual residential treatment center (RTC) data that will be used in calculating the prospective per diem rates for new RTCs seeking certifications under the TRICARE program.

Affected Public: Business or other for-profit; non-profit institutions.

Annual Burden Hours: 240.

Number of Respondents: 20.

Responses per Respondents: 1.

Average Burden per Response: 12 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are psychiatric residential treatment centers (RTCs) seeking certification under the TRICARE program to provide needed services to eligible children and adolescents. The data collection instrument, i.e., TRICARE Form 771, will collect the necessary reimbursement information that will be used in calculating prospective all-inclusive per diem rates for new RTCs under the TRICARE program. Based on current trends, it is estimated that about 20 forms will be completed and submitted to the TRICARE program per fiscal year for RTCs seeking certification under the program.

The TRICARE Support Office (TSO), formerly known as OCHAMPUS, published a proposed rule on 4 December 1987, (52 FR 46098), and final rule on 1 August 1988, (53 FR 28873), in the **Federal Register** clarifying participation requirements and establishing a new reimbursement system for payment of RTCs. These amendments outlined the methodology used in calculating the individual RTC rates along with the capped amount. The amendments also described the data collection elements and responded to 23 distinct categories of comments.

The TRICARE program will be responsible for: (1) sending out the data collection instrument (TRICARE Form 771) to all RTCs seeking certification under the TRICARE program; (2) answering all inquiries regarding the data collection; (3) compiling and analyzing the submitted data; (4) following up on missing or incomplete data; (5) calculating the individual prospective all-inclusive per diem rates; and (6) sending out RTC participation agreements with the calculated rates.

The TRICARE's failure to collect the information will jeopardize fulfillment of the program requirements and would result in the agency's inability to collect the necessary data for establishment of RTC rates. The agency's inability to establish prospective per diem rates could also result in a reduction in availability of RTCs for TRICARE beneficiaries.

The prospective payment methodology: (1) provides the potential for control over rapidly increasing costs for mental health care within the Department of Defense; (2) ensures that TRICARE beneficiaries are not subject to exaggerated or unjustified costs for RTC care solely because of the TRICARE entitlement; and (3) provides for a rate of reimbursement for all participating RTCs which reflects a reasonable amount consistent with rates charged by their peers nationally and with reimbursement they are accepting from other third-party payers.

The use of improved information technology has been a consideration in capturing RTC charge data necessary to calculate new rates; however, this would create an excessive administrative burden on the agency for the relatively small number of providers affected by the request. RTCs represent less than 0.13 percent of TRICARE institutional providers and less than 0.04 percent of TRICARE individual professional providers. The agency would have to make major modifications to its payment records and data files in order to retrieve this information.

In the data collection form design, we have made every effort to eliminate any duplication. The form consists of two major categories of data collection: (1) institutional per diem rates; and (2) additional ancillary or professional charges not included in the per diem rates. All data information systems have been queried to determine if there was any duplication of data collection elements. None of the routine data collection reports maintained by the agency have the information formatted in a way that can be used to calculate the new RTC rates.

While TSO generates RTC reports, these reports do not include professional claims which are billed separately from the institutional component. Since the professional charges arenot married up with institutional charges, an all-inclusive rate cannot be determined under the existing reporting system. The marrying

up of claims would require extensive reprogramming of the current payment system reports and would probably result in questionable data. Even if TSO could modify its current reporting system, it would only provide one of the data components necessary for establishing the RTC rates. The rates for other third-party payers would remain inaccessible under the TSO reporting system. Other third-party information is critical in establishing the most favorable rate for the RTC. The RTC is the only one that can provide other third-party information.

The data collection form is simplistic in design to minimize administrative burden on the RTCs. The requested information should already be maintained by the facility for normal operation. It is anticipated that it should take one person 8 to 10 hours to prepare the data, and an additional 2 to 4 hours if TRICARE should have follow-up inquiries regarding their data submission. TSO or the TRICARE contractor staff will be available to answer any questions that the RTCs may have regarding completion of the form.

The issue of confidentiality has been considered. The data submitted by RTCs will be kept in strict confidence and will not be accessible to competitors. The only information accessible to the general public will be the TRICARE all-inclusive rates calculated for each RTC. These rates will appear in the TRICARE/CHAMPUS Policy Manual and may be released under the Freedom of Information Act.

The information requested is financial in nature and may be considered private or confidential in a business sense. Specific knowledge of a RTC's financial position may create an unfair advantage for its competitors. However, the information requested is necessary for calculating the individual prospective all-inclusive per diem rates. The RTCs are only being asked to provide those data (financial) elements used directly in the reimbursement formula. They have also been assured that facility specific information will be kept confidential. The instruction sheet and cover letter will justify collection of the information and give a detailed explanation of the data element requirements.

The number of one-time respondents is 20. It is estimated that a maximum of 12 hours will be required to complete the form since the requested information should already be maintained by the facility for normal operation. Most of the administrative burden will be associated with the reformatting of existing financial information. The burden of collecting the data will be dependent on the type of reporting system in use. Facilities which maintain their financial records on computers will be able to retrieve the requested information faster than those with manual systems. The use of computerized data may cut the reporting time in half (6 hours). Larger RTCs are more likely to have sophisticated reporting systems than smaller facilities. However, this is probably more the exception than the rule with the advent of more reasonably priced ADP systems for small businesses. The total one-time reporting burden is estimated to be 240 hours.

Dated: October 31, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29309 Filed 11–5–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–04]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–04, with attached transmittal and policy justification pages.

Dated: October 31, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

24 OCT 1997

In reply refer to:
I-54191/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-04, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to the Netherlands for defense articles and services estimated to cost $71 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) Prospective Purchaser: The Netherlands

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 71 million
TOTAL	$ 71 million

(iii) Description of Articles or Services Offered: Basic F-16 pilot training in CONUS to include professional classroom training, simulator testing, and flight training and other related program requirements necessary to sustain a three year CONUS training.

(iv) Military Department: Air Force (THH)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress:

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Netherlands - Basic F-16 Pilot Training

The Government of Netherlands has requested a possible sale of basic F-16 pilot training in CONUS to include professional classroom training, simulator testing, and flight training and other related program requirements necessary to sustain three years of CONUS training. The estimated cost is $71 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the military capabilities of the Netherlands and furthering standardization and interoperability of the Dutch and U.S. Air Forces.

This training will enable the Netherlands to ensure a well trained cadre of personnel will be available in the future to operate and maintain military equipment of U.S. origin.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The pilot training will be provided by U.S. Government and U.S. contractor instructor personnel who provide similar services to the U.S. forces. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 97–29308 Filed 11–5–97; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 8, 1997, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 31, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0725–1 AMC

SYSTEM NAME:

Small Arms Sales Record Files *(February 22, 1993, 58 FR 10180).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'U.S. Army Armament and Chemical Acquisition and Logistics Activity, ATTN: AMSTA-AC-MMDL, Rock Island, IL 62199–7630.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'U.S. Army Armament and Chemical Acquisition and Logistics Activity, ATTN: AMSTA-AC-MMDL, Rock Island, IL 62199–7630.'

* * * * *

A0725–1 AMC

SYSTEM NAME:

Small Arms Sales Record Files.

SYSTEM LOCATION:

U.S. Army Armament and Chemical Acquisition andLogistics Activity, ATTN: AMSTA-AC-MMDL, Rock Island, IL 62199–7630.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any U.S. citizen considered eligible under Federal regulations who purchased a firearm from the U.S. Government for personal use.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, mailing address, application for purchase of firearm, date purchased, DA Form 3535 (Weapon Sales Record), information concerning weapon caliber, model, type and serial number of firearm, relevant correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2574.

PURPOSE(S):

To respond to individual citizen requests to purchase firearms from the U.S. Government for personal use.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Federal, state and local law enforcement investigative agencies may be furnished information from this system of records to determine last known firearm ownership, to trace recovered or confiscated firearms, and to assist in criminal prosecution or civil court actions.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets.

RETRIEVABILITY:

By purchaser's surname; type of weapon; and serial number.

SAFEGUARDS:

Records are maintained in areas accessible only to designated persons having official need therefor in the performance of their duties. Building housing records are protected by security guards.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Army Armament and Chemical Acquisition and Logistics Activity, ATTN: AMSTA-AC-MMDL, Rock Island, IL 62199–7630.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Armament and Chemical Acquisition andLogistics Activity, ATTN: AMSTA-AC-MMDL, Rock Island, IL 62199–7630.

Individual should provide their full name; current address as well as address at time of firearm purchase, if different; type, caliber, and serial number of firearm(s) purchases; and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the U.S. Army Armament and Chemical Acquisition and Logistics Activity, ATTN: AMSTA-AC-MMDL, Rock Island, IL 62199–7630.

Individual should provide their full name; current address as well as address at time of firearm purchase, if different; type, caliber, and serial number of firearm(s) purchases; and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–29307 Filed 11–5–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–47–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

October 31, 1997.

Take notice that on October 24, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–47–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install and operate a turbine meter at its St. Henry Meter Station, located in Mercer County, Ohio, under ANR's blanket certificate issued in Docket No. CP82–480–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR proposes to install one 3-inch turbine meter at its existing St. Henry Meter Station, located in Mercer County, Ohio. ANR states the St. Henry Meter Station currently consists of one 4-inch turbine meter. ANR declares it provides deliveries to West Ohio Gas Company at this location. ANR asserts it is proposing to add the turbine meter at the St. Henry Meter Station in order to meet customer demand that sometimes exceeds the capability of the existing meter when gas pressure at the station is low (less than 400 psig).

ANR states the total cost of the proposed facility is estimated to be approximately $57,500.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29339 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–310–004]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 31, 1997.

Take notice that on October 28, 1997, Garden Banks Gas Pipeline, LLC (GBGP), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet Nos. 89 and 90 to reflect to correct Index Price as approved in Docket No. RP97–487–000 on September 24, 1997, with an effective date of November 1, 1997.

GBGP states the purpose of the filing is to properly state the Index Price being equal to the spot price as published in Natural Gas Intelligence Gas Price Index for South Louisiana Region, Tennessee Line 500, effective November 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29330 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–181–000]

Howard/Avista Energy, LLC; Notice of Filing

October 31, 1997.

Take notice that on October 16, 1997, Howard/Avista Energy, LLC (Howard/Avista), petitioned the Commission for acceptance of its FERC Rate Schedule No. 1, and an order authorizing Howard/Avista to sell energy at market-based rates, and for certain blanket approvals, and the waiver of certain Commission Regulations.

Howard/Avista intends to engage in wholesale electric power and energy purchases and sales as a marketer. Howard/Avista is a Washington limited liability company formed by Avista Energy, Inc., a wholly-owned subsidiary of The Washington Water Power Company, and Howard Energy Marketing, Inc., a wholly-owned affiliate of Howard Publications, Inc. Howard/Avista is not in the business of generating, transmitting, or distributing electric power.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 14, 1997. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29335 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–68–000]

Illinois Power Company; Notice of Filing

October 31, 1997.

Take notice that on October 6, 1997, Illinois Power Company (Illinois Power) tendered for filing firm transmission agreements under which Illinois State University will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 15, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions

or protests should be filed on or before November 14, 1997. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29337 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–158–000]

Indeck Pepperell Power Associates, Inc.; Notice of Filing

October 31, 1997.

Take notice that on October 14, 1997, Indeck Pepperell Power Associates, Inc., tendered for filing a summary of its activity for the quarter ending September 30, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 14, 1997. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29336 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3200–001]

Montaup Electric Company; Notice of Filing

October 31, 1997.

Take notice that on October 10, 1997, Montaup Electric Company filed amendments to its open access transmission tariff to comply with the Commission's order of September 12, 1997, in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 10, 1997. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29338 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–469–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

October 31, 1997.

Take notice that on October 27, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, proposed tariff sheets to the effective on October 1, 1997, and others on December 1, 1997.

Natural states that the purpose of this filing is to comply with the Commission's order issued September 26, 1997, in Docket No. RP97–469–000, which required Natural to submit tariff changes relating to the recovery of gas supply realignment costs.

Natural requested any waivers which may be required to permit the tendered tariff sheets to become effective October 1, 1997 and December 1, 1997, as indicated in the filing.

On October 28, 1997, Natural filed a letter with the Commission requesting that the three tariff sheets proposed to be effective December 1, 1997, be deemed withdrawn. Natural further stated that Natural will refile the three sheets in a separate filing within 30 days of the proposed effective date.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP97–469–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29327 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES98–2–000]

New York State Electric & Gas Corporation; Notice of Application

October 31, 1997.

Take notice that on October 14, 1997, New York State Electric & Gas Corporation (NYSE&G) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue a short-term debt in the amount of $275,000,000 and funds necessary to release its coal-fired generation assets from the lien of NYSE&G's mortgage.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, 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 November 24, 1997. Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make the protestsants 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29334 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–268–004]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

October 31, 1997.

Take notice that on October 27, 1997, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets identified in Appendix A to the filing. Tennessee requests an effective date of December 1, 1997.

Tennessee states that these sheets are filed in compliance with the Commission's September 25, 1997, Order Granting Rehearing in Part, Accepting Compliance Filing, and Rejecting Tariff Filing issued in the above-referenced dockets (September 25, Order). Tennessee Gas Pipeline Company, 80 FERC ¶61,359 (1997).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29332 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–21–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes In FERC Gas Tariff

October 31, 1997.

Take notice that on October 29, 1997, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed on Appendix A to the filing to become effective December 1, 1997.

Texas Eastern asserts that the purpose of this filing is to comply with the Stipulation and Agreement filed by Texas Eastern in Docket Nos. RP88–67, et al. (Phase II/PCBs) and with Section 26 of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that such tariff sheets reflect a small increase in the PCB-Related Cost component of Texas Eastern's currently effective rates. For example, the increase in the 100% load factor average cost of long-haul service under Rate Schedule FT–1 to Market Zone 3 is $0.0015/dth.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions. Copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88–67, *et al.* (Phase II/PCBs) and to all current interruptible shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29325 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ98–1–35–000]

West Texas Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 31, 1997.

Take notice that on October 29, 1997, West Texas Gas, Inc. (WTG), submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to be effective November 1, 1997:

Twenty-Fifth Revised Sheet No. 4

WTG states that the tariff sheet and the accompanying explanatory schedules constitute an out-of-cycle PGA filing submitted pursuant to the purchased gas adjustment provisions of Section 19, of the General Terms and Conditions of its tariff. WYG states that copies of the filing were served upon its customers and affected state commissions.

WTG request the Commission to accept the proposed tariff sheet, which reflects an increase of $1,2399 per Mcf in its cost of gas, to be effective November 1, 1997. According to WTG, its gas costs have increased sharply due to substantial recent increases in the spot price of gas. To prevent the accumulation of a significant level of costs in its deferred account, WTG requests the Commission to shorten or waive the 30-day notice period to permit a prompt adjustment to is sales rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29324 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–20–000]

Wyoming Interstate Company Ltd.; Notice in Proposed Changes in FERC Gas Tariff

October 31, 1997.

Take notice that on October 28, 1997, Wyoming Interstate Company Ltd. (WIC), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective November 1, 1997.

WIC states the purposes of this filing is to conform WIC's Volume No. 1 tariff (individually certificated services) to the changes made to WIC's Volume No. 2 Tariff (open access service) to comply with Order No. 587–C requirements.

WIC states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29326 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–375–000]

Wyoming Interstate Company, Ltd.; Notice of Informal Settlement Conference

October 31, 1997.

Take notice that an informal settlement conference in this proceeding will be convened on November 13, 1997, at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Arnold Meltz at (202) 208–2161 or John Roddy at (202) 208–0053.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29328 Filed 11–5–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5918–4]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of Agency receipt of a notification of intent to certify equipment and initiation of 45-day public review and comment period.

SUMMARY: Detroit Diesel Corporation (DDC) has submitted to the Agency a notification of intent to certify urban bus retrofit/rebuild equipment to a 0.1 gram per brake-horsepower-hr(g/bhp-hr) particulate matter (PM) standard pursuant to 40 CFR Part 85, Subpart O. The equipment, referred to by DDC consists of the base engine components used on the 25% reduction retrofit/rebuild kit certified by DDC (October 2, 1995), components from the 25% retrofit catalyst kit previously certified under the program by Engine Control Systems, Ltd. (January 6, 1997), and a TurboPac supercharger system supplied by Turbodyne Systems, Inc. which supplies additional charge air during engine acceleration. The candidate kit is applicable to all 6V–92TA MUI engine models made by DDC for model years 1979 to 1989 and equipped with mechanical unit injectors (MUI).

DDC intends this equipment to be certified to the particulate matter level of 0.10 g/bhp-hr. If the Agency certifies that this equipment complies with the 0.10 g/bhp-hr level, then operators with affected engines will have the choice of using this equipment or other equipment that is already required for use and certified to the 0.10 g/bhp-hr standard within the cost limitation.

Pursuant to § 85.1407(a)(7), today's **Federal Register** notice summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XX–A of Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located at the address listed below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to the addresses below.

DATES: Comments must be submitted on or before December 22, 1997.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Air Docket A–93–42 (Category XX–A), Room M–1500, 401 M Street S.W., Washington, DC 20460.

2. Anthony Erb, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 ''M'' Street S.W., Washington, DC 20460.

The DDC notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Option 1 establishes particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Option 2 is a fleet averaging program that establishes a specific annual target level for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is certification of retrofit/rebuild equipment, which begins when an equipment manufacturer submits an application for certification (referred to in the rule as a notification of intent to certify). To meet either of the two compliance options, operators of the affected buses must use equipment that has been certified by EPA. Emissions requirements under either of the two options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Option 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Option 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program.

Under Option 1, additional information regarding cost must be submitted in the notification, in order for certification of that equipment to initiate (or trigger) program requirements for a particular engine model. In order for the equipment to serve as a trigger, the certifier must guarantee that the equipment will be offered to affected operators for $7,940 or less at the 0.10 g/bhp-hr PM level, or for $2,000 or less for the 25 percent or greater reduction in PM. Both of the above amounts are based on 1992 dollars and include life cycle costs incremental to the cost of a standard rebuild.

II. Notification of Intent To Certify

In a notification of intent to certify equipment signed July 16, 1997, DDC has applied for certification of equipment under the Environmental Protection Agency's (the Agency) Urban Bus Retrofit/Rebuild Program. The candidate kit is applicable to all 6V–92TA, urban bus engine models made by DDC from model year 1979 to 1989 and equipped with mechanical unit injectors (MUI). The equipment, consists of the base engine components used on the 25% reduction retrofit/rebuild kit certitied by DDC , components from the 25% retrofit catalyst kit certified by Engine Control Systems, Ltd.(ECS) and a TurboPac supercharger system supplied by Turbodyne Systems, Inc. that supplies additional charge air during engine acceleration. The kit would be available in three horsepower levels (253, 277, and 294) for 6V–92TA engines.

The equipment to be certified includes three distinct hardware sets. The three sets included are as follows:

Base engine components include the equipment certified by DDC to provide a 25% reduction in PM (60 FR 51472; October 2, 1995. These components are provided in two separate sets of parts. The first set of components is comprised of newly manufactured parts, including a gasket kit, air inlet hose, cylinder kits (piston assemblies and cylinder liners) a by-pass valve and a truck type throttle delay. The second set of components includes Reliabilt™ remanufactured parts, including the fuel injectors, camshafts, blower assembly, turbocharger, and head assemblies. Kit usage is based on engine rotation (righthand (RH) or lefthand (LH)), engine orientation, right bank cam gear mounting (bolt or nut), and engine power output based on injector size. The only differences from the previously certified equipment according to DDC is the inclusion of a truck style throttle delay, adjustment to the throttle delay and injector timing settings to improve driveability. The cylinder kit components were modified to improve durability.

The converter/muffler supplied by ECS was certified by EPA (see 62 FR 746; January 6, 1997) to provide a 25% reductionn in PM emsssions. The kit consists of an oxidation converter/muffler (CM) which was developed specifically for diesel applications, and is packaged as a direct replacement for the vehicle's muffler. Several kits will be provided to accommodate the installation requirements of the various engine and vehicle configurations.

The third component set consists of an electrically powered supercharger system which is supplied by Turbodyne Systems, Inc. This component set, referred to as the TurboPac™ supplies additional intake air during engine acceleration from low engine speeds. DDC states that in addition to decreasing PM emissions and visible smoke during engine acceleration, the supercharger also improves engine response and vehicle driveability by reducing the fuel modulation during acceleration. The basic kit consists of a blower, a diverter valve, a boost pressure sensor, an electrical control box and power cables, and a throttle switch for detecting the start of the engine acceleration mode. The equipment will be supplied in two kits, one includes those components common to all installations and a second kit to accommodate the installation requirements of the various engine and vehicle configurations.

To complete an engine rebuild two (2) base engine component kits, one (1) converter muffler kit, and two (2) supercharger kits would be required. The specific kits used will depend on the engine/vehicle combination.

DDC states there are no differences in the service intervals or maintenance practices for the base engine associated with the installlation of the upgrade kit. The converter/muffler requires no regularly scheduled maintenance, only an occasional cleaning if the maximum backpressure of the exhaust system is exceeded according to DDC. The supercharger does not require scheduled maintenance: however, a visual inspection for air leaks is recommended whenever the engine is serviced.

Standard procedures as described in the service manual for 92 Series engines are to be used when rebuilding the base engines using the candidate equipment. No unique rebuild procedures are required.

Use of the candidate kit is restricted to 6V–92TA Detroit Diesel engines manufactured from January 1979 through December 1989, equipped with mechanical unit fuel injectors (MUI), and originally certified to meet Federal emission standards. The required fuel is low sulfur (0.05% max by weight) diesel fuel, either number 1 or number 2.

The notification states that the candidate equipment achieves a particulate matter (PM) level of 0.10 g/bhp-hr. DDC has not supplied life cycle cost information and is not requesting certification based on cost to operators. The use of the equipment by transit operators to meet program requirements is discussed below.

DDC presents exhaust emissions data from testing a Detroit Diesel Corporation (DDC) engine in accordance with procedures set forth at 40 CFR Part 86, Subparts N and I. A 1984 model year DDC 6V92TA MUI model engine (277 HP) was rebuilt to the 1989 urban bus configuration as per the previously certified DDC kit and was retrofit with the specified components of the 0.1 g/bhp-hr kit prior to testing. In the rebuild process, all parts not included in the rebuild kit were inspected. Prior to testing the engine was tuned with the injector timing set at 1.460 in. The throttle delay was set for optimum vehicle driveability according to DDC. The data is summarized in Table A below.

TABLE A.—EXHAUST EMISSIONS SUMMARY

	g/bhp-hr	
	1989 HDDE standards	6V92TA MUI with kit
Gaseous and particulate test:		
HC	1.3	0.1
CO	15.5	0.4
NO_X	10.7	9.8
PM	0.60	0.091
BSFC[1]	—	0.464
Standards		
Smoke test:		
ACCEL	20%	3.3%
LUG	15%	2.5%
PEAK	50%	4.2%

[1] Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp-hr.

The data of Table A indicate that, when rebuilt with the kit, PM emissions of the test engine are less than 0.10 g/bhp-hr, and emissions of hydrocarbon (HC), carbon monoxide (CO), and smoke opacity are within applicable Federal standards. The Agency requests comments on whether the emissions test data presented by DDC demonstrate that all engines for which certification is requested will meet applicable Federal standards with the candidate kit installed.

Applicability of the candidate is restricted to 6V92TA, urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1979 to 1989 and equipped with mechanical unit injectors (MUI). The Agency requests comments on whether the emissions data presented by DDC demonstrate that all engines for which certification is intended will meet the 0.10 g/bhp-hr PM standard. The part numbers of the specified rebuild components are provided in DDC's notification.

DDC's notification does not provide life cycle cost information for the candidate kit. Therefore, this kit will not be certified to comply with the life-cycle cost requirements of the program. The 0.10 g/bhp-hr PM level has already been triggered for all the engines covered by this notification. If certified as proposed in the notification, this equipment may be used by operators who are required to use equipment that meets the 0.10 g/bhp-hr PM level based on earlier trigger certification.

DDC indicates that the engine is to be rebuilt according to the engine manufacturer's standard written rebuild procedures and specifications except where amended by DDC written instructions. The incremental maintenance cost and fuel economy impact are not provided in DDC's notification and are not necessary for certification as the cost limitation is not being certified to by DDC.

The DDC notification provides a product warranty that references the emissions performance and emissions defect warranties required in accordance with section 85.1409 of the program regulations.

Even if ultimately certified by the Agency, the equipment described in DDC's notification may require additional review by the California Air Resources Board (CARB) before use in California. The Agency recognizes that special situations may exist in California that are reflected in the unique emissions standards, engine calibrations, and fuel specifications of the State. While requirements of the Federal urban bus program apply to several metropolitan areas in California, the Agency understands the view of CARB that equipment certified under the urban bus program, to be used in California, must be provided with an executive order exempting it from the anti-tampering prohibitions of that State. Those interested in additional information should contact the Aftermarket Part Section of CARB, at (818) 575–6848.

If the Agency certifies the candidate equipment, then urban bus operators who choose to comply with compliance Option 1 of this regulation will have the option to use this equipment or other equipment which has previously been certified to the 0.10 g/bhp-hr standard when applicable engines are rebuilt or replaced. If certified, then operators using Option 2 will use the 0.10 g/bhp-hr certification level in calculations for fleet level attained (FLA).

The date of this notice initiates a 45-day period during which the Agency will accept written comments relevant to whether the equipment described in the DDC notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review this notification, and provide written comments during the 45-day review period. Separate comments should be provided in writing to each of the addresses listed under the **ADDRESSES** section of this notice.

At a minimum, the Agency expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) the certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) problems with installing, maintaining, and/or using the equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The Agency will review this notification of intent to certify, along with comments received from the interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Dated: October 29, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–29394 Filed 11–5–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5918–5]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Certification of Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of EPA certification of equipment provided by Johnson Matthey Incorporated.

SUMMARY: Today's **Federal Register** notice announces EPA's decision to

certify equipment to the 0.10 g/bhp-hr standard for the Urban Bus Retrofit/Rebuild Program. The equipment is provided by Johnson Matthey Incorporated (JMI).

JMI submitted to EPA a notification of intent to certify equipment, in materials signed December 9, 1996, pursuant to the program regulations at 40 CFR part 85, subpart O. On January 30, 1997, EPA published a notice in the **Federal Register** that the JMI notification had been received and made the notification available for public review and comment for a period of 45 days (62 FR 4528). EPA has completed its review and the Director of the Engine Programs and Compliance Division has determined that it meets all requirements for certification. Therefore, EPA certified this equipment in a letter to JMI dated September 8, 1997.

The certified equipment, initially referred to by JMI as the Catalytic Reduction Technology-Cam kit, is a kit consisting of proprietary camshafts, CEM II catalytic exhaust muffler, and specific engine rebuild parts and certain engine settings. The nomenclature of the kit, Catalytic Reduction Technology-Cam, has been discontinued by JMI. The kit will be marketed by JMI under the name, Cam Converter Technology (CCT™) upgrade kit. Therefore, today's notice will refer to the equipment as the CCT™ kit.

The kit is applicable to 6V92TA urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1979 to 1989 and equipped with mechanical unit injectors (MUI), and may be used immediately by transit operators in compliance with program requirements. The kit is available in four horsepower ratings (253, 277, 294, and 325 horsepower).

EPA has determined that the CCT™ kit complies with the 0.10 gram per brake horsepower-hour (g/bhp-hr) particulate matter (PM) standard for the applicable engines. In addition, because JMI will offer the kit to all parties for $7,940 (in 1992 dollars) or less, incremental to the cost of a standard rebuild, EPA has determined that JMI's notification complies with the life cycle cost requirements of the program regulations. JMI may make an alternative supply option available to purchasers.

Today's **Federal Register** notice triggers requirements for transit operators utilizing compliance Program 1 that have engines rated above 294 horsepower in their fleet covered by this certification (excluding engines certified to meet California emissions standards).

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XV–A of Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located at the address listed below.

Additional details concerning this certification, the JMI CCT™ kit, and responsibilities of transit operators, are provided below.

DATES: EPA certified this equipment in a letter to JMI dated September 8, 1997. Today's **Federal Register** notice announces this certification, and triggers the 0.10 g/bhp-hr standard for applicable engines above 294 hp. The 0.10 g/bhp-hr standard was triggered on March 14, 1997 (62 FR 12166) for applicable engines rated at 294 hp and below.

ADDRESSES: The JMI notification, as well as other material specifically relevant to it, are contained at the U.S. Environmental Protection Agency's Public Air Docket A–93–42 (Category XV–A), Room M–1500, 401 ''M'' Street SW, Washington, DC 20460.

The JMI notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 ''M'' St. SW, Washington, D.C. 20460. Telephone: (202) 233–9297.

SUPPLEMENTARY INFORMATION:

I. Description of the Certified CCT™ Kit

The certified CCT™ kit described in today's **Federal Register** notice, the Cam Converter Technology (CCT™) upgrade kit, is provided by Johnson Matthey Incorporated (JMI). It is certified to the 0.10 g/bhp-hr standard, and complies with the applicable life cycle cost requirements.

The certification described in today's notice applies to 1979 though 1989 model year DDC 6V92TA engines that are equipped with mechanical unit injectors (MUI) and certified to federal emissions standards. It does not apply to engines certified to California emissions standards. The impact of this decision on transit operators is discussed in more detail in the ''Transit Operator Requirements'' section below.

The CCT™ kit, described further below, consists of a CEM II catalytic exhaust muffler, proprietary cam shafts, specified emissions-related engine rebuild parts, and specified engine settings. The kit is available in four horsepower (hp) ratings (253, 277, 294 and 325 horsepower).

The CEM II is the same size and shape as the CEM catalytic exhaust muffler (certified for the Urban Bus Program as described in the **Federal Register** on April 17, 1996, at 61 FR 16773), is a direct, bolt-on replacement for the original equipment muffler, and is designed to fit the specific bus/engine combination.

The camshafts, a proprietary JMI design, change exhaust valve lift and duration. The CCT™ kit includes a timing height gauge for the unique timing height of the fuel injectors. The procedure and specifications for setting the exhaust valve clearance is unchanged from the DDC recommended procedure.

For retrofit with the CCT™ kit, an engine is rebuilt in accordance with standard DDC rebuild procedures, using specified engine parts that produce unique engine configurations. The specified emissions-related engine parts consist of the following DDC components: turbocharger, fuel modulator, piston dome kit, piston skirt, piston ring set, cylinder liner, blower drive gear, blower assembly, fuel injectors, blower by-pass valve, and governor assembly. The specified engine settings apply to the fuel injector height and fuel modulator setting. The specified settings and part numbers for the emissions related DDC parts are provided in letters from JMI dated July 18, 1997 and August 21, 1997.

For service of a CCT™-equipped engine, the DDC compression check procedure remains applicable and JMI will provide compression specifications with the kit instructions. Other DDC service procedures remain applicable.

All configurations of the CCT™ include a fuel modulator to limit throttle advance during acceleration, as replacement of the standard throttle delay of the original coach engine configuration. The CCT™ kit includes instructions for installation of the fuel modulator, and adjustment settings for the fuel modulator.

All affected transit operators may purchase the specified emissions-related parts from JMI as part of a CCT™ kit. Additionally, JMI may make available a second supply option whereby the kit consists of the CEM II, proprietary camshafts, and a list of the specified emissions-related parts and engine settings. With the second supply option, an operator is responsible for acquiring the specified parts from sources of its

own choosing, as discussed further below. Neither option includes parts that are rebuilt by transit operators.

All of the testing presented by JMI for this certification was conducted using OE parts, except for the CEM II and camshafts. As a result, EPA has no assurance that engines rebuilt using parts that are not original equipment (OE) would comply with the 0.10 g/bhp-hr standard. Therefore, use of engine parts that are not the specified OE parts, or engine parts rebuilt in-house, are not covered by the certification described in today's **Federal Register** notice.

Pursuant to 40 CFR 85.1409, JMI will provide a 100,000-mile defect warranty and a 150,000-mile emissions performance warranty for the CCT™ kit, and all of its components regardless of which of the two supply options is used by a transit operator.

JMI states that the maximum cost of the CCT™ kit for 6V92TA MUI engines is $11,495.00 (in 1997 dollars), which includes the CEM II, proprietary camshafts, specified emissions-related parts, and specified engine settings. JMI indicates that installation of the whole CCT™ kit requires an additional two hours (for installation of the CEM II) beyond the labor associated with a standard rebuild.

EPA's certification of the Engelhard Corporation's ETX™ kit (62 FR 12166; March 14, 1997) triggered the 0.10 g/bhp-hr standard for 1979—1989 6V92TA MUI engines. That kit provided three power ratings: 253, 277, and 294 horsepower (hp). JMI will offer the CCT™ kit in four power ratings: 253, 277, 294, and 325 hp. Certification of the CCT™ kit described in today's **Federal Register** notice, which includes compliance with life cycle cost requirements, triggers the 0.10 g/bhp-hr standard for engines rated above 294 hp. This topic is discussed further below.

II. Background and Bases for Certification

In a notification of intent to certify equipment, composed of an initial document signed December 9, 1996 and subsequent documents, Johnson Matthey (JMI) applied for certification of the CCT™ kit under the Environmental Protection Agency's (EPA) Urban Bus Retrofit/Rebuild Program. Engines applicable to the certified kit are 6V92TA urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1979 to 1989 that are equipped with mechanical unit injectors (MUI) and certified to comply with federal emissions standards.

The equipment, referred to in initial documents as the Catalytic Reduction Technology—Cam kit, was renamed by JMI to the Cam Converter Technology (CCT™) upgrade kit. The certifier's principal place of business is: Johnson Matthey Incorporated, Environmental Products, Catalytic Systems Division, 460 East Swedesford Road, Wayne, Pennsylvania 19087–1880.

Using engine dynamometer (transient) testing in accordance with the Federal Test Procedure for heavy-duty diesel engines, JMI demonstrated compliance with the 0.10 g/bhp-hr particulate matter (PM) emissions standard. Engine dynamometer data, shown below in Table 1, are the bases for the certification approval of the CCT™ kit when used on applicable engines. The emissions test data are part of JMI's notification of intent to certify, which is available in the public docket located at the above-mentioned address. All testing was conducted using #2 low-sulfur diesel fuel.

TABLE 1.—SUMMARY OF JMI TESTING

Gaseous and particulate test	g/bhp–hr	1988 HDDE standards				
		1984 6V92TA MUI baseline[1]	1984 6V92TA MUI baseline[1]	6V92TA MUI with CCT™ [1]	1983 6V71TA MUI baseline	6V71TA MUI with CCT™
HC	1.3	0.7	0.5	0.3	0.6	0.2
CO	15.5	1.1	0.9	0.5	1.7	0.8
NO_X	10.7	9.5	13.0	10.2	10.4	10.2
PM	0.6	0.56	0.251	0.08	0.329	0.096
BSFC[2]	.....	0.475	0.456	0.470	0.468	0.464
Hp (R/O)[3]	.....	253/249	277/269	277/274	225/211	265/254
Smoke Test	Standards (%)	Percent Opacity				
ACCEL	20	3.1	1.3	2.9	2.0	2.3
LUG	15	2.0	0.5	2.0	2.6	1.3
PEAK	50	4.8	3.3	3.6	3.0	2.9

[1] All 6V92TA testing was performed on engine identification number 6VF–118287.
[2] Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp–hr.
[3] Horsepower (Rated/Observed during testing).

The exhaust emissions data presented by JMI are from testing Detroit Diesel Corporation (DDC) engine models 6V71TA and 6V92TA, in accordance with procedures set forth at 40 CFR part 86, Subparts N and I. The two engine models were tested in baseline configurations and equipped with the CCT™ kit. The baseline 6V92 engine was tested in two horsepower ratings: 253 and 277.

The data of Table 1 demonstrate that for both test engines, when rebuilt with the CCT™ kit, PM emissions are less than 0.10 g/bhp–hr and, emissions of hydrocarbon (HC), carbon monoxide (CO), and smoke opacity are within applicable federal standards. The data for the 6V92TA engine indicate that the kit increases NO_X emissions roughly seven (7) percent above the level of the baseline 6V92TA rated at 253 hp. The data for the 6V71TA engine indicate that the CCT™ kit does not increase NOx emissions. With CCT_X kits installed, the NO_X levels for both the 6V92 and 6V71 certification engines are less than the federal standard for model years 1985—1989 (10.7 g/bhp–hr).

To facilitate the review process, JMI requested in a letter dated August 6, 1997, that EPA temporarily restrict its review to 6V92TA engine models. Therefore, today's **Federal Register** notice describes certification of equipment only for 6V92TA MUI engine models. The emissions data for the 6V71TA engine is included in today's notice to support the demonstration of compliance of the CCT™ kit with the 0.10 g/bhp–hr standard. Further action

taken with regard to 6V71 engines would be done by subsequent **Federal Register** notice.

This action applies a PM emissions level of 0.10 g/bhp–hr to all 1979 through 1989 DDC 6V92TA MUI urban bus engines, when properly equipped with the CCT™ kit and when using either diesel fuel #1 or #2. Table 2 lists the applicable engine models and certification levels associated with the certification announced in today's **Federal Register**.

TABLE 2.—CERTIFICATION LEVEL OF CCT™ KIT

Engine models	Engine codes	Certification PM level
1979–1989 DDC 6V92TA MUI	All certified to meet federal emissions standards	0.10 g/bhp–hr.

All engines for which the CCT™ kit is intended to apply are expected to meet the 0.10 g/bhp–hr PM standard because the kit instructs the rebuilder to replace all emissions-related parts during the rebuild with JMI-specified parts, and install a CEM II. The engine-out emissions level (upstream of the CEM–II catalyst) is expected to be predictable because all emission-related parts are replaced using the JMI specified emissions-related parts and settings of the kit. As demonstrated by the two test engines, the combination of the specified parts, proprietary camshafts, specified settings of the kit, and CEM–II, results in a PM level less than 0.10 g/bhp–hr.

Summarized below in Table 3 is a life cycle cost analysis presented by JMI for the CCT™ kit. A cost analysis is necessary only for certification of equipment that is meant to trigger a program emissions standard. Certification of Engelhard Corporation's ETX™ kit triggered the 0.10 g/bhp–hr standard for 6V92TA MUI engines, and made available kits rated at 253, 277, and 294 hp. The Engelhard certification does not provide a kit rated above 294 horsepower. JMI's emissions demonstration and cost analysis applies to engines rated at 253, 277, 294, and 325 hp. Therefore, the certification described in today's notice triggers the 0.10 g/bhp–hr standard for engines rated above 294 horsepower.

JMI's initial notification presented a life cycle cost analysis based on the CCT™ kit containing the CEM II, the proprietary cam shafts, and a list of specified emissions related parts and settings. In a letter dated June 2, 1997, JMI stated its intent to market the CCT™ kit to include all emissions related parts. In a letter dated July 3, 1997, JMI presented a cost analysis in accordance with section 85.1403, for the supply option where JMI provides all components of the CCT™ kit, including the specified engine parts. EPA determines that, based on this information, the notification meets life cycle cost requirements. The analysis is discussed below.

As shown in the summary of Table 3, total life cycle costs are less than the life cycle cost ceiling specified in the program regulations ($7,940 in 1992 dollars). The life cycle cost ceiling, updated to May 1997, is to $9,060.54.

TABLE 3.—LIFE CYCLE COST ANALYSIS OF CCT™ Kit for 6V92TA ENGINES

	1997 dollars
CCT™ Upgrade Kit Maximum Cost	$11,495.00
Cost Offset (for Kit parts normally replaced during standard rebuild)	[1] (3,978.58)
Installation Labor for CEM II (2 hours)	79.88
3% Fuel penalty	964.30
Total Life Cycle Costs	8,560.60
LCC Ceiling [2] ($7,940 x 160.1÷ 140.3)	9,060.54

[1] Weighted Rebuild Costs for parts, normally replaced during a standard rebuild, are from 62 FR 12166, March 14, 1997, and adjusted to 1997 dollars using a base CPI of 158.3 for October 1996, and the CPI of 160.1 for May 1997.
[2] CPI for 1992=140.3. CPI for May 1997=160.1.

As shown above in Table 3, JMI states that the maximum cost of the CCT™ kit, including all specified engine parts, is $11,495.

The proprietary camshafts and other specified engine components provided with the CCT™ kit result in an ''offset'' for parts which otherwise are replaced during a standard engine rebuild. The costs for the individual rebuild parts that are offset by the kit parts, as shown in Table 4 below, were determined by EPA in (1996 dollars) for certification of Engelhard Corporation's ETX™ kit (see 62 FR 12166; March 14, 1997). JMI updates the costs to May 1997 based on a ratio of the Consumer Price Indexes (CPI) noted in Table 4. These ''offset'' costs are subtracted from the maximum purchase cost of the CCT™ kit, as shown above in the summary of Table 3.

TABLE 4.—CCT™ UPGRADE KIT PARTS LIST FOR 6V92TA MUI ENGINES

	No. Part	Part of standard rebuild?	October 1996 cost (CPI=158.3)	May 1997 cost (CPI=160.1)
1	CEM II	No		
2	Cam RB	Yes	$607.45	$614.363
3	Cam LB	Yes	607.45	614.364
4	Modulator	No		

TABLE 4.—CCT™ UPGRADE KIT PARTS LIST FOR 6V92TA MUI ENGINES—Continued

	No. Part	Part of standard rebuild?	October 1996 cost (CPI=158.3)	May 1997 cost (CPI=160.1)
5	Blower drive gear 40T.	No		
6	Blower bypass valve.	No		
7	Governor Ass'y	No		
8	Governor cover ass'y.	No		
9	Turbocharger	Yes	464.43	469.71
10	Fuel Injectors	Yes	420.50	425.28
11	Dome kit or crown.	Yes	1,522.74	1,540.05
12	Piston Skirt	Yes	With #11	With #11
13	Ring Set	Yes	With #11	With #11
14	Cylinder Liner	Yes	With #11	With #11
15	Blower Ass'y	Yes	311.28	314.82
Offset Total				3,978.58

Except where amended by JMI written instructions, an engine is to be rebuilt according to the engine manufacturer's standard written rebuild procedures and specifications. Therefore, installation of the CCT™ kit is essentially identical to a standard engine rebuild plus the installation of the CEM II catalyst exhaust muffler. Therefore, the labor cost for installation of the kit, incremental to a standard rebuild, is based on an additional two hours for installation of the CEM II. The two hours additional installation time is added to the life cycle costs of the kit, as shown above in Table 3. In accordance with section 85.1403, the labor rate specified in the regulation, $35/hour (in 1992 dollars), when updated to May 1997, is $39.94/hour.

JMI states that engines equipped with the CCT™ kit will have no additional maintenance or service requirements. Therefore, incremental maintenance costs for engines equipped with the CCT™ kit is zero.

JMI presents baseline data from testing two standard 1984 model year configurations rated at 253 and 277 horsepower. Based on comparison with the testing of the baseline 277 hp engine, fuel consumption when the CCT™ kit is installed is determined to be three (3) percent higher. Based on this 3 percent penalty, the incremental fuel cost for the kit is calculated in accordance with section 85.1403(b)(1)(ii)(c)(1), and added to the life cycle costs as shown above in Table 3.

The total life cycle costs for the CCT™ kit, as shown above in Table 3, is determined to be $8,560.60. The life cycle cost ceiling ($7,940 in 1992 dollars), when updated to May 1997 using a ratio of the CPIs noted in Table 3, is $9,060.54. In conclusion, based on the above analysis, EPA determines that the CCT™ kit for 6V92TA MUI engines complies with the life cycle cost requirements of the urban bus program.

In a letter dated August 6, 1997, JMI requested the ability to supply transits under two supply option scenarios. Under supply option 1, JMI would supply the CCT™ kit including the CEM II, the proprietary camshafts, and all of the specified emissions related engine parts. Under supply option 2, the CCT™ kit would include the CEM II, the proprietary camshafts, and a list of specified parts with certain fuel injector and fuel modulator settings. JMI indicated that supply option 2 might include specific parts that could be rebuilt by transits to JMI specifications and subject to strict controls by JMI.

EPA approves supply option 1 and part of supply option 2. For supply option 1, transit operators purchase the entire CCT™ kit from JMI or its distributors. This supply option is the option upon which life cycle costs have been determined, and upon which the 0.10 g/bhp-hr standard is triggered for engines having ratings above 294 horsepower. Therefore, the supply option 1 is required to be available to any and all operators. Supply option 2, described below, may be made available at JMI's discretion. Operators that choose the supply option 2, do so voluntarily, and EPA makes no representation concerning the impact of this supply option on life cycle costs. The certification of today's **Federal Register** notice does not include use of parts that are rebuilt by transit operators because EPA lacks assurance that parts rebuilt by transit operators would have the same emissions performance.

For supply option 2, JMI will provide the list of specified DDC emissions-related engine parts and engine settings to transit operators upon purchase of the CEM II and proprietary camshafts. Transit operators will then purchase the specified emissions-related parts (excluding the CEM II and proprietary camshafts, which must be obtained from JMI) through supply channels of the operator's choosing. The certification of today's **Federal Register** notice does not include use of parts that are rebuilt by transit operators.

III. Summary and Analysis of Comments and Concerns

Comments were received from three parties in response to the **Federal Register** notice of January 30, 1997 (62 FR 4528). The commenters are Detroit Diesel Corporation (DDC), Engelhard Corporation, and New York City Transit Authority (NYCTA). DDC and Engelhard, provided extensive comment. DDC is the original manufacturer of the engine models to which the CCT™ kit applies, and has applied for certification of equipment to comply with the 0.10 g/bhp-hr standard. Engelhard is the manufacturer of equipment certified under the urban bus program that triggered the 0.10 g/bhp-hr standard for the 1979–1989 6V92TA MUI engines (see 62 FR 12166; March 14, 1997). NYCTA, as a large transit bus operator in a major metropolitan area, is subject to requirements of the urban bus program.

Comments or issues fell into the following general categories: (A) applicability of the kit; (B) description of the kit; (C) testing demonstration and documentation; (D) life cycle cost

analysis; and, (E) warranty. All correspondence, comments, and other documentation are located in the public docket at the address above.

(A) Applicability

In the January 30, 1997, **Federal Register** notice, EPA stated that the information provided in JMI's initial notification did not support certification of engines beyond model year 1989, because the federal new engine standard for NO_X dropped in 1990 to 6.0 g/bhp-hr and in 1991 to 5.0 g/bhp-hr. (The NO_X level of either certification test engine, when rebuilt with the kit, is greater than 10 g/bhp-hr.) Additionally, EPA noted that the JMI notification lacked support for certification of DDC's ''DDEC'' engines, because neither test engine is equipped with electronically-controlled fuel injection.

In comments dated March 14, 1997, DDC stated that the CCT™ kit should not be certified for numerous types of DDC two stroke/cycle engines including all California engine models. In general, DDC indicated that the JMI notification lacked support of testing demonstration and/or documentation, and because the test data showed that the kit exceeds the California NO_X standards. DDC also noted that engines rated at 325 and 340 hp are beyond the range normally used in urban bus applications.

In a letter dated December 17, 1996, JMI restricted its notification to DDC 6V92TA, 6V71T, and 6V71TA MUI engines of model years 1979 through 1989. Furthermore, in a letter dated August 6, 1997, JMI requested that EPA temporarily restrict its review to 6V92TA MUI engines in order to expedited the certification process. Therefore, today's **Federal Register** notice pertains only to EPA's certification of the CCT™ kit as applicable to 6V92TA MUI engine models. EPA also notes that documentation from Dallas Area Rapid Transit indicates that it has buses equipped with 325 hp 6V92TA MUI engines. EPA therefore believes it appropriate to include the 325 hp rating in the certification described in today's notice.

In a letter to JMI dated March 17, 1997, the California Air Resources Board (CARB) indicated that, without further test data showing that California-certified engines are not adversely affected by the CCT™ kit, CARB cannot allow use of the CCT™ kit. EPA recognizes that special situations may exist in California that are reflected in the unique emissions standards, engine calibrations, and fuel specifications of the State. While requirements of the federal urban bus program apply to several metropolitan areas in California, EPA understands the view of CARB that equipment certified under the urban bus program, to be used in California, must be provided with an executive order exempting it from the anti-tampering prohibitions of that State. Those interested in additional information should contact the Aftermarket Part Section of CARB, at (818) 575–6848.

(B) Description of the CCT™ Kit

Engelhard commented that the CCT™ kit specifies use of a fuel modulator, and notes that it is not standard on 6V92TA coach engines. Standard equipment on such coach engines is a throttle delay. Engelhard claims that the fuel modulator will cause serious bus driveability problems if not properly set and used in combination with the appropriate engine configuration. DDC states that it has no experience with the hardware combinations for which JMI has requested certification. Both DDC and Engelhard indicate that the effect of the CCT™ kit on bus driveability needs to be determined before the kit is certified.

EPA notes that field experience to date, although limited, does not indicate driveability problems. (Field experience is discussed further below.) The basis for Engelhard's claim concerning driveability problems appear to be conjecture based on theory of how an improperly set fuel modulator would function in conjunction with an engine operating on ''low'' boost pressure. Given the field experience presented by JMI, EPA does not believe there is justification for a delay in certification.

DDC questions JMI's original proposal to allow operators to use aftermarket parts equivalent to original equipment, noting that DDC's design and manufacturing specifications and tolerances are proprietary and not available to aftermarket part suppliers. Relatedly, NYCTA questions the use of non-DDC components, and expresses concern regarding the maintenance, durability, emissions levels, and warranty coverage associated with such parts.

In response, JMI modified its notification in a letter dated June 2, 1997, to restrict the specified parts of the CCT™ kit to DDC-supplied original equipment. EPA notes that JMI's 6V92TA certification engines were equipped with DDC components.

DDC questions the applicability of its procedures for checking cylinder compression and camshaft timing, given the unique combination of parts in the CCT™ kit. JMI states that the injector cam maintains a standard profile, and the exhaust valves open less and for a shorter time. JMI states that the DDC service method for checking camshaft timing by measuring cam lift versus crank angle remains applicable. JMI indicates that the procedure for checking cylinder compression remains appropriate, but that the compression specifications are different as a result of the lower compression ratio of the CCT™ engine. JMI will provide cylinder compression specifications with the CCT™ kit.

DDC references section 85.1406(d) of the program regulations, which includes the requirement that ''* * * installation of any certified retrofit/rebuild equipment shall not * * * result in any additional range of parameter adjustability or accessibility to adjustment than that of the vehicle manufacturer's emission related part'', and notes that the JMI injector height setting of 1.420 inches is outside the range of 1.460 to 1.520 inches which DDC allows and supports with gauges for service adjustment.

EPA notes that the purpose of the cited passage of section 85.1406(d) is to prevent retrofit/rebuild equipment from increasing the likelihood or potential for tampering. Although the CCT™ kit requires a unique fuel injector timing height, the kit does not change the inherent ''range of adjustability'' or ''accessibility to adjustment'' of DDC's basic fuel injector system. The height setting of the CCT™ kit is not tampering, indeed it is a requirement of the kit to ensure compliance with emissions levels demonstrated by JMI's testing. JMI will provide a gauge, for setting fuel injector height, with the CCT™ kit.

Both Engelhard and DDC provide numerous comment on the unique components and settings in the CCT™ kit, and are concerned that there is not sufficient field or in-use experience. DDC notes that the JMI fuel injection height specification (1.420 inches) is less than the minimum DDC allows (1.460 inches), and states that a potential unfavorable stack-up of component and adjustment tolerances may cause engine problems due to injector follower bottoming in real-world operating conditions. DDC notes that its minimum timing height specification takes into consideration such unfavorable stack-up plus the potential separation of the injector actuation linkage which can occur under engine overspeed (over-revving) conditions. Engelhard notes that JMI's 277 and 294 hp ratings use the same injector, asks how much power the JMI 325 hp rating actually produces, and asks for explanation of why the CCT™

kit use larger injectors than the corresponding original DDC ratings.

JMI acknowledges that the fuel injector height setting (1.420 inches) of the CCT™ kit is outside DDC's normal range. However, JMI states that testing performed on injectors at Southwest Research Institute and JMI distributors indicate that the injectors bottom-out between 1.380 and 1.390, and that successful operation has been sustained at a setting of 1.400. JMI believes that the specified injector setting will present no risk to the correct operation of the engine. JMI notes that the CCT™ technology, including the 1.420 setting, has been used extensively in other industry applications, as described further below. JMI will provide a gauge for setting injector height with the CCT™ kit.

EPA does not know whether or how prevalent engine over-speed conditions occur in transit operation (for example, whether it may occur during long downhill conditions when a bus might drive its engine to high speeds), or how significant of a problem it presents to the JMI settings for the injectors. Consequently, EPA does not know whether there is an adequate margin of safety in the injector height setting of the CCT™ kit to preclude any engine problems under all potential bus engine operating conditions. JMI, however, has demonstrated engine-dynamometer experience, some in-use transit bus operation (discussed further below), and in-use experience in other industries with no noted problems. Additionally, an emissions defect warranty, pursuant to section 85.1409 of the program regulations, is provided by JMI for all components of the CCT™ kit, which include the fuel injectors and proprietary camshaft. The warranty may leave other parts of the injector actuating mechanism without coverage. However, EPA does not believe such coverage to be necessary at present. EPA may take additional action, if significant in-use problem develop. For example, EPA has authority under section 85.1413 of the program regulations to decertify equipment if, for example, use of certified equipment severely degrades driveability, operation, or function.

EPA does not believe it necessary for JMI to explain why injectors in the CCT™ kit are larger than those typically used in corresponding DDC ratings. EPA recognizes that the CCT™-equipped engine is a unique combination of components, and fuel injectors are clearly emissions-related components.

Engelhard comments that the severe injection advance plus lower compression ratio of the CCT™ kit will result in problems, including cold weather starting problems, shorter engine life, reduction in low speed performance and higher fuel consumption, and calls for JMI to demonstrate the need for the injection advance and the affect on durability, fuel economy and performance. Engelhard states that JMI should use a non-biased third party test facility to demonstrate that the kit does not degrade performance. DDC notes that the kit differs from DDC configurations and that they have no experience with it.

Engelhard and DDC also comment on the design of the proprietary camshaft, indicating that a change in camshaft design can impact engine performance and durability. Engelhard's concerns range from the dynamics of the valve train, which might affect durability of valve train parts, to increased internal exhaust gas recirculation (EGR), which might increase wear of cylinder liners and rings due to increased oil contamination with soot. Engelhard calls for durability data to verify that the valve train will not fail prematurely, and to ensure that the CCT™ kit will not cause additional maintenance and/or engine failure.

JMI has presented information in support of the durability and performance of the CCT™ kit. JMI states that it has two field trials underway. One is a 1983 Gillig powered by a 6V92TA MUI at Kitsap Transit in Bremerton, Washington. No problems have been reported as of July, with 16,000 miles of routine transit service. A second transit trial on a 6V92TA DDEC II engine has been initiated in an un-named northern city. JMI presents three routine analyses of the lubrication oil from the Kitsap transit bus, and indicates that the analyses show typical, normal patterns of engine break-in with no unusual results. Soot is unmeasurable in the oil at 4,451 miles. In a letter to EPA dated June 10, 1997, the Kitsap Director of Vehicle Maintenance, acknowledging that six weeks and 12,000 miles of accumulated service is a relatively short period of time, notes that the bus is responsive to driver demands in a fashion that is in keeping with this engine (somewhat more powerful), and no increase in fuel or oil consumption.

Additionally, JMI presents information that the engine components of the CCT™ kit have been used on several engines in the oil and water pumping industries in stationary source locations, with no reported problems. In general, these stationary engines operate in a cyclic mode from low speed to wide-open-throttle, full load, to supply power for drilling and pumping rigs. One such engine, a 6V92TA, has been run for more than 3,500 hours with no reported problems. Another diesel engine has been run more than 13,000 hours with no reported problems.

In comments dated July 21, 1997, DDC states that the differences in fuel modulator and throttle delay response characteristics may also be observed in real world driving conditions. DDC further notes that, although the Kitsap tests may not be representative of all engine, bus, and driving pattern combinations, it suggests that the CCT™ kit can be employed without serious loss of vehicle performance and the tests go a long way to allaying the concern expressed in DDC's original comments.

Regarding its proprietary camshaft, JMI states that the injector cam profile of its proprietary cam is identical to the original equipment (OE) cam profile, and the ramps and acceleration of the exhaust cam are the same as the original equipment (OE) camshaft. Additionally, the transition from the cam base circle to the first rise is slightly more gradual than the OE camshaft. JMI states that the dynamics of the CCT™ camshaft (exhaust valves open less and for a shorter time) may result in improved mechanical durability compared to the OE camshaft. While noting that the CCT™ technology slightly increases the amount of internal EGR, JMI notes the above-described long-term experience in the oil and pumping industry. Further, oil analyses being conducted in the Kitsap field trial, described above, indicates no additional soot contamination of the lubrication oil.

JMI presented the above-discussed information in support of the operability and durability of the CCT™ kit. No evidence has been presented that indicates a specific problem with the design, operability, or durability of the CCT™ kit. While there is no requirement under the program regulations for a certifier to demonstrate operability or durability of equipment, EPA remains concerned about the long-term performance of all certified equipment. However, any conclusions regarding decreased performance, durability, or operability of CCT™-equipped engines are speculative at present, and the in-use information presented by JMI does not indicate concern with the CCT™ kit. As noted above, EPA has authority under section 85.1413 to decertify equipment that fails to comply with requirements of the regulations.

EPA notes that JMI is required to cover the fuel injectors, camshaft, cylinder liners, pistons, piston rings, and other components of the CCT™ kit,

regardless of supply option, under the emissions defect warranty required pursuant to section 85.1409.

DDC notes that its maximum back pressure limit for the 6V92TA MUI bus engines is typically 3 inches of mercury, and expresses concern that the addition of the CEM II catalytic muffler could cause DDC exhaust back pressure limits to be exceeded in many bus installations. DDC also is concerned about the JMI's field service procedure for checking exhaust back pressure, which states that it should be measured at full stall conditions. DDC indicates that the only way to check back pressure for conformance with DDC back pressure limits is with an engine operating at rated speed and wide-open-throttle. Back-pressure measurements made at any other condition will under-represent the full engine exhaust back pressure, and checking back pressure under these conditions may lead to excessive back pressure when the engine is operated in service. DDC calls for assurances that the CEM II will not cause DDC back pressure limits to be exceeded for any affected bus application. Verification must account for not only for the restriction of a clean catalyst core, but must also account for restrictions imposed by other exhaust system components, and the effects of core aging and ash accumulation over time.

JMI states that the CEM II is physically identical to the design of the original CEM, and its back pressure performance will be identical to the back pressure performance of the CEM under the same conditions. JMI notes that back pressure due to standard commercial mufflers vary, and may range from less than 0.5″ mercury (Hg) to more than 1.0″ Hg. Additionally, total back pressure may vary according to exhaust system design, engine speed or horsepower. JMI states that back pressure testing was conducted, as standard production practice, on CEM and CEM II units, using a 6V92TA of 322 hp, to ensure compliance with the 3.0″ Hg maximum set by DDC. All CEM models tested had back pressure values between 1.0″ to 1.5″ mercury.

EPA, in general, is concerned with in-use problems resulting from excessive back pressure. However, no information presented by commenters substantiate a concern for excessive back pressure with the CEM II. More specifically, EPA has not received comments from transit operators or others indicating significant problems with high back pressure from the CEM catalyst muffler, which JMI indicates is physically identical to the CEM II.

Regarding the ''full stall'' method of checking back pressure, JMI states that it is a common, practical tool used by transit operators to measure exhaust backpressure. JMI notes that conducting measurements at rated speed and wide-open-throttle is difficult because transit operators typically do not have chassis dynamometers available to permit such measurements. EPA notes that, as a general diagnostic tool, such measurement of back pressure could be useful with any exhaust system (catalyst or muffler). While the full transmission stall test may under represent full back pressure, it appears to provide some usefulness as a back pressure check. As with other CCT™ kit components, JMI is required to warrant the CEM II under the warranties required pursuant to section 85.1409. As noted previously, EPA can take action in the event of significant in-use problems and, ultimately, has authority to decertify equipment.

Few certifiers have extensive experience from in-use transit service to comprehensively demonstrate the durability and performance of equipment certified for the urban bus retrofit/rebuild program. Nor does the program regulation require such comprehensive demonstration. JMI has presented information of in-use experience in support of these characteristics of the CCT™ kit, and EPA knows of no reason at this time to oppose certification.

(C) Testing Demonstration and Documentation

NYCTA comments that the PM emissions levels of the certification engines are close to the 0.10 g/bhp-hr standard, expresses concern that CCT™ equipped engines will emit above the standard after in-use operation, and asks whether deterioration factors have been included in the certification levels. NYCTA also notes that the emissions data for the 6V92TA engine indicates that NO_X emissions increase, and NYCTA believes that some buses equipped with the CCT™ kit will emit above the 1988 emissions standard (10.7 g/bhp-hr).

The urban bus program regulations do not specifically require manufacturers to demonstrate the durability of their candidate equipment. Similarly, there is no requirement for certifiers to develop an empirical basis for determining a deterioration factor. During the initial design of the urban bus program, EPA recognized that durability demonstration would impose a significant burden on certifiers, and expected that such burden would prevent technologies from coming forward. A program without certified technology would provide minimal emission reductions. Instead of requiring a durability demonstration, the program is based on the requirement for certifiers to warrant their equipment for defects and emissions performance (as specified in section 85.1409), on EPA's authority to perform in-use testing of certified equipment, and on EPA's authority to decertify noncompliant equipment (as specified in section 85.1413). As stated in the preamble to the final rule of April 21, 1993 (58 FR 21379): ''EPA believes that, therefore, it is sufficient to hold manufacturers responsible for the emissions performance of their equipment through an emissions performance warranty * * *'' and ''Manufacturers will want to evaluate the durability of their equipment before selling it under this program to minimize their liability risk.'' Section 85.1413 provides authority to EPA to decertify equipment that EPA determines does not meet emissions requirements in-use. These emissions requirements include the HC, CO, NO_X, and smoke standards of a particular engine, in addition to the PM standards of the urban bus regulation.

The JMI notification indicates that the test engines were selected as ''worst case'' based on Table 3 of 58 FR 21373 (April 23, 1993). Engelhard comments that the test engine is not worst case for emissions from a catalyst-equipped engine, basically because the exhaust flow from higher horsepower engines would increase engine exhaust back pressure and reduce residence time of the exhaust within the catalyst, lowering catalyst effectiveness. Engelhard also claims that the CEM II, subject to higher exhaust temperatures from the higher horsepower engines, will have a greater tendency to make sulfate. DDC comments that the exhaust flow from higher hp engines is expected to be greater, but the 277 hp engine is the most popular for transit usage and therefore makes it the proper choice for certifying equipment for use on engines rated at 253, 277, and 294 horsepower.

For several reasons, EPA believes that the 6V92TA test engine equipped with the CCT™ kit, and rated by JMI at 277 hp, is acceptable to demonstrate compliance for 253, 277, 294, and 325 hp ratings. First, the test engine is clearly the engine model for which JMI is claiming applicability of the CCT™ kit. Further, the rating of the certification test engine is the most popular power rating according to the engine manufacturer. It therefore is the most representative power rating. Second, JMI has also presented

emissions testing data from a 6V71TA engine model, which also demonstrates compliance of the CCT™ kit with the 0.10 g/bhp-hr standard.

Regarding Engelhard's concern for higher exhaust flow with higher horsepower, no information is presented for the potential increase in sulfate emissions and that contribution to the total particulate emissions of any of the engine ratings. Additionally, it is not clear that an engine of the JMI-rated 294 hp or 325 hp, would have significantly different exhaust emissions or flow rate from the certification test engine. This is because, as DDC notes, higher horsepower ratings generally produce higher exhaust temperatures which may compensate for lower catalyst residence time (that is, higher temperatures are generally conducive to higher catalytic conversion efficiency). Furthermore, JMI analyzed data published for DDC engine configurations, to show that exhaust flow rates of higher horsepower engines may increase only in the order of a few percent over the flow rate of a 277 hp engine. JMI notes that one 330 hp 6V92TA has a standardized flow rate that is 1.4 percent greater, and another 330 hp 6V92TA has a standardized flow rate that is 3.7 percent less, than the published flow rate for a 277 hp 6V92TA coach engine. JMI states that this increase in flow rate is well within the margin of safety that is engineered into the CEM II and will represent no loss in conversion. In summary, EPA is not convinced that exhaust flow is clearly related to engine horsepower rating, or that a higher horsepower test engine would necessarily be worst case. EPA is not aware of evidence suggesting a problem with back pressure from this catalytic muffler design. Also, JMI has more than one catalyst biscuit size, and the emissions testing on the 6V92TA was performed on its smallest biscuit. JMI bears the burden of the emission performance warranty required by program regulations.

In its letter of August 11, 1997, Engelhard comments that the same fuel injectors are used in the CCT™ kit for the 277 hp rating and 294 hp rating, and concludes that there is no 294 hp kit. Engelhard indicates that JMI needs to provide an explanation regarding the injector specifications.

EPA is aware that typical industry practice is to use larger fuel injectors for higher horsepower, because, as Engelhard notes in its comments, larger injectors result in higher horsepower. JMI has not provided EPA with torque curves for its power ratings other than the certification test engine rated at 277 hp. The requirements of the urban bus program were designed to minimize testing burden, while demonstrating emissions compliance, but not to verify performance of every engine rating. While JMI has demonstrated compliance with the 0.10 g/bhp-hr standard, operators should be aware that EPA has not verified the power output of ratings other than that which JMI tested for exhaust emissions.

Engelhard compares the engine torque curves developed during JMI's testing of the CCT™ kit and baseline engine, and comments that the CCT™ kit results in an significant loss of low torque and horsepower compared to a standard urban bus engine. Engelhard concludes that this will cause significant performance, acceleration, and fuel economy problems for users of the CCT™ kit. In its initial comments of March 14, 1997, DDC also notes the low torque developed at low engine speeds. DDC and Engelhard call for demonstration of in-use performance and durability evaluation.

In response, JMI states that low speed acceleration of a bus equipped with the CCT™ kit is improved, because the kit includes replacement of the throttle delay (standard equipment on bus engines) with a fuel modulator. JMI states that a bus equipped with a standard throttle delay experiences a limit on the full fuel acceleration. The throttle delay is designed to make full engine torque developed available in 4 to 7 seconds. An engine equipped with the CCT™ kit will immediately have all the torque developed available to the driver for acceleration. Therefore, low speed acceleration is improved.

Comments from Kitsap Transit, reflecting limited experience with the CCT™-equipped engine, state that ''* * * our drivers believe that on board power has been improved.'' In its comments of July 21, 1997, DDC notes that, although the Kitsap tests may not be representative of all engine, bus, and driving pattern combinations, it suggests that the CCT™ kit can be employed without serious loss of vehicle performance and the tests go a long way to allaying the concern expressed in DDC's original comments.

EPA recognizes differences between the torque maps generated for the baseline and the certification engine. However, EPA believes that the torque curve (that is, the torque map) generated for transient emissions testing can be a misleading representation of the torque that would be available at any instant from a similar engine during in-use service. This is due to the manner in which the torque map is generated for the transient emissions test and the particular fuel control means (such as throttle delay or fuel modulator) used on an engine. As DDC notes in its comments, the torque map is generated with the throttle delay fully discharged and the fuel rack in the full fuel position. Therefore, the influence of the throttle delay on fuel control is not reflected in the torque reported for the torque map. DDC states that the differences in fuel modulator and throttle delay response characteristics may also be observed in real world driving conditions. EPA therefore believes that conclusions based solely on comparison of torque maps may be misleading.

In summary, regarding the relative performance of CCT™-equipped engines, EPA is not aware of any clear evidence indicating a performance concern. Actual in-use experience, although limited, suggests that the CCT™ kit provides performance comparable to an original configuration.

DDC notes that during certification testing the CEM II was installed at a distance of six feet from the exhaust outlet of the turbocharger turbine, and comments that if the CEM II is installed in a location on a bus which is more than 6 feet from the turbine outlet, then the exhaust gases will be cooler and the effectiveness of the catalyst in oxidizing soot emissions will be less than was observed in the certification testing.

JMI presents exhaust temperature data from testing performed during certification of the CEM, which indicate a reduction of 10 degrees in exhaust gas temperature (from 627 degrees F to 617 degrees F) over a six-foot length between the turbine outlet and CEM. JMI states that if the CEM II is located an additional three or even six feet away from the outlet, then the exhaust temperature would decline by only an additional 5 to 10 degrees, which would have no effect on catalyst activity.

The temperature of the exhaust gases from a bus engine is continually changing during in-use operation due to variations in engine speed and load. EPA has no information that an additional few degrees drop in exhaust gas temperature is of significant concern regarding catalyst effectiveness. EPA has accepted in the past, as demonstration of compliance with emissions requirement of the urban bus program, emissions data developed from testing catalysts at a distance of six feet from the turbine outlet.

(D) Life Cycle Cost Analysis

NYCTA comments that the power ratings of the JMI certification test engine is above the range normally used in urban bus applications, and this should be included in the incremental life cycle cost analysis because of

implications related to higher wear on driveline components and higher fuel consumption. Also, NYCTA states that it is not clear what power ratings are being offered by JMI.

JMI states that it will offer the CCT™ kit for the 6V92TA models in four horsepower ratings (253, 277, 294, and 325) that are for the most part, typical to the transit industry. (JMI has asked EPA to temporarily restrict its review to CCT™ kits applicable to 6V92TA engine models.) While JMI has not provided EPA with torque curves for its ratings other than the certification test engine rated at 277 hp, EPA notes that the certification engine produced a maximum power of 274 hp during the torque map, which is within roughly 1 percent of the JMI rating (277 hp). Therefore, EPA believes that JMI's nomenclature (that is, the ''rating'') for the CCT™ kit configuration it tested, 277 hp, is consistent with the actual power produced for the emissions test. EPA believes that operators having engines originally rated at 277 hp will most likely choose a retrofit kit of the same horsepower rating.

NYCTA also comments that data is needed, such as periodic catalyst inspection or replacement, in order to estimate the incremental maintenance cost component of the life-cycle costs. NYCTA also indicates that field testing experience in transit service is needed in order to estimate incremental life cycle costs.

JMI states that there is no incremental maintenance costs associated with the CCT™ kit—the maintenance checks required for a standard DDC engine also apply, at the same interval, to a CCT™-equipped engine. There is no scheduled replacement of the CEM II catalyst.

NYCTA notes the significant difference in the torque characteristics of the CCT™ equipped engine compared to the original configuration. NYCTA comments that modifications to the drive train may be required to maintain acceptable acceleration, and this should be included in the life-cycle estimates.

The need for drive train modifications appear to be speculative at present. EPA believes that comparing the torque maps of the baseline and CCT™ equipped engine as discussed above, may be misleading for purposes of predicting vehicle acceleration. Additionally, JMI states that the field trial being conducted at Kitsap Transit indicate that the performance, power and acceleration of the CCT™ equipped engine is not impaired.

The JMI cost analysis includes incremental costs for 2 hours of labor for installation of the CEM II catalytic muffler. Both DDC and Engelhard question this cost. Engelhard comments that an installation time of 4 to 6 hours is more appropriate. DDC questions the appropriateness of the time estimate for installation of the CEM II, given that the installation time budgeted for the converter muffler of the Engelhard ETX™ kit (see 62 FR 12166; March 14, 1997) is 6 hours, and installation of the two converters are ''* * * seemingly similar activities * * *''. DDC also states that installation time should include time to check that back pressure limits are not exceeded, and should account for installation of the water drainage device required for some applications of the kit, and incremental maintenance costs associated with routine vehicle maintenance.

JMI indicates that over 54 designs of CEMs have been engineered to cover the broad range of coach and engine combinations. The initial application for the CEM estimated a maximum installation time of 6.5 hours as a best estimate. JMI's installation time for the CEM II of 2 hours is based on field experience with actual installation of the CEM. JMI also has provided data and statements from operators supporting the accuracy of the two-hour installation time.

EPA believes that 2 hour installation time is appropriate for the cost analysis, and is included above in Table 3. JMI states that the water drainage device is not necessary on any vertical exhaust stack, and is therefore not included in the LCC analysis. JMI provides an emissions defect warranty, pursuant to section 85.1409 of the program regulations, which includes coverage of the CEM II. JMI also states that the CCT™ kit does not have additional routine maintenance requirements, incremental to standard DDC maintenance, service or installation procedures, including routine checks of the CEM II.

Engelhard comments that JMI's initial baseline engine, a DDC 6V92TA engine configured to a 253 hp rating, is invalid for comparison because of the specific parts used in the JMI certification engine. Engelhard claims that the turbocharger and fuel injectors of JMI's certification engine are from a 294 hp configuration and, therefore, for an accurate comparison of fuel economy and emissions, the CCT™ kit of 277 rating needs to be compared with a baseline engine of 294 hp. Engelhard claims that comparing the JMI engine with a 294 hp baseline engine from a previous Engelhard test program shows a 12 percent loss in fuel economy for the CCT™ kit.

In response, JMI subsequently tested a second baseline engine, a DDC configuration rated at 277 hp as shown above in Table 1. Engelhard comments that this baseline engine is not performing properly because the NOx emissions (13.0 g/bhp-hr) are significantly higher than the federal standard (10.7 g/bhp-hr) applicable to 1985 through 1989 model year.

EPA notes that JMI's 6V92TA certification engine produced a maximum power of 274 hp during the torque map, which is within roughly 1 percent of the JMI rating (277 hp). Therefore, EPA believes that JMI's nomenclature (that is, the ''rating'') for the CCT™ kit configuration it tested, 277 hp, is consistent with the actual power produced for the emissions test. The actual combination of parts developed by JMI for its 277 hp rating, while perhaps unique, is not relevant to choice of baseline engine for fuel consumption comparison. EPA believes that operators having engines originally rated at 277 hp will most likely choose a retrofit kit of the same horsepower rating. Therefore, for comparison of fuel consumption, engines of the same rating should be compared.

Regarding the NO_X emission level of the 277 hp baseline engine, the measured value (13.0 g/bhp-hr) may be higher than typical for this rating. However, EPA believes that the test of the 277 hp baseline engine is adequate for its sole purpose—to determine the impact of the CCT™ kit on fuel consumption.

DDC comments that the only proper way to make fuel economy comparisons is at equivalent power ratings, and Engelhard in its comments notes the potential for significant cell-to-cell variations that make correlating data between test cells unreliable.

DDC also comments that comparison made at maximum hp and maximum torque with DDC's published values suggests that the CCT™ kit imposes a 6 to 7 percent fuel economy penalty.

EPA believes that a typical operating cycle for urban buses cannot be characterized by fuel consumption determined at steady state, full power output, as DDC has suggested. EPA notes that a comparison of the 253 hp baseline engine with the certification engine (JMI-rated at 277 hp) indicates a one percent improvement with the kit. Additionally, JMI references preliminary in-service experience from the Kitsap field trial that indicates a 20 percent improvement in fuel economy, and states that JMI's position is that no fuel penalty should apply. Section 85.1407 of the program regulations require that incremental fuel cost be

determined based on testing performed over the heavy-duty engine federal test procedure, or an approved alternative test procedure. EPA believes that it is appropriate to compare data from engines of the same horsepower and from the same test cell, when available, for determining the fuel economy impact. This data is available from the JMI testing and such comparison is consistent with the requirements of the regulations. Comparison of the baseline DDC-rated 277 hp engine to the JMI-rated 277 hp certification engine indicates a fuel penalty of 3 percent for the CCT™ kit. Using the calculations required for this determination, as set forth at section 85.1403(b)(1), the impact on the life cycle cost analysis of the CCT™ kit, as shown above in Table 3, is determined to be a penalty of $964.30.

Engelhard states that fuel modulators are not standard on 6V92TA coach engines. The standard throttle delay will have to be removed and the fuel modulator installed and the additional labor associated with this should be included in the LCC analysis. JMI indicates that a standard rebuild would include the removal, and reinstallation and re-calibration of the throttle delay. This is necessary in order to remove and replace the fuel injectors and other key engine components. When an engine is rebuilt with the CCT™ kit, the fuel modulator is installed in place of the throttle delay. EPA believes that use of the fuel modulator in a CCT™ kit presents no costs, incremental to the costs of a standard rebuild.

In its comments of July 21, 1997, DDC indicates that it is in fundamental agreement with the JMI life cycle cost analysis, except for the cost offset of the proprietary cam of the CCT™ kit. The cost offset in the analysis is $1229, and DDC believes that the offset should be $320, which is the cost for remanufactured camshafts available from DDC. DDC believes that most operators would be expected to use remanufactured parts when replacing camshafts at the time of rebuild.

EPA determined the cost of a ''weighted'' rebuild for the cost evaluation of DDC's upgrade kit for the 6V92TA MUI (61 FR 37734; July 19, 1996), and later updated that cost for certification of the Engelhard ETX™ kit (62 FR 12166; March 14 1997), both using cost information provided by DDC, and others, at those times. For the evaluation of the CCT™ kit, EPA relies on the cost determination for a ''weighted'' rebuild published in the **Federal Register** on March 14, 1997, updated to May 1997. EPA has not modified its March 14th determination of the cost because it has no data on the fraction of operators which are expected to use remanufactured camshafts.

(E) Warranty

DDC commented that the JMI warranty does not provide coverage for non-JMI parts that are used in conjunction with a CCT™ kit in rebuilding an engine, and does not cover any liability for labor costs or for any incidental or consequential damages. DDC also noted that use of standard DDC parts in conjunction with the CCT™ kit could result in the parts being subjected to unduly harsh operating environments, and DDC's parts warranty does not extend to parts that have been misapplied or misused. DDC noted that the warranty applies coverage only if an engine is operated with ''unadulterated'' diesel fuel, yet it is common practice for many operators to use fuel additives.

During the review process, JMI's warranty language underwent changes, as did the description of the CCT™ kit of today's notice. As noted previously, JMI restricted the specified emissions-related parts of the kit to DDC-supplied parts. Also, JMI changed its warranty language to make clear that it covers the emissions-related parts that JMI specifies to be used with the CCT™ kit. Warranty coverage applies to both supply options. The JMI warranty was also modified so that coverage is not conditioned on the use of ''unadulterated'' fuel. JMI states that additives are permissible, but requests to review the constituents of any additives used by transit operators before they are used by the transit.

With regard to labor costs, JMI is not required to cover labor costs associated with warranty repair because labor associated with equipment installation and maintenance is the responsibility of the transit operator. (Maintenance includes warranty repair.) This point is stated in the preamble to the final rule of April 21, 1993 (58 FR 21381): ''Bus operators will be responsible for the proper installation and maintenance of the equipment.'' Additionally, incidental or consequential damages, or non-JMI parts used in conjunction with retrofitting with a CCT™ kit, are not required to be covered pursuant to the warranty requirements of the program regulations (section 85.1409). EPA is not aware of any evidence that incidental or consequential damages will occur. If significant in-use problems develop, then EPA may take action.

IV. Certification

The Agency has reviewed the notification of intent to certify and other information provided by JMI, along with comments received from interested parties, and finds that the CCT™ kit described above:

(1) Complies with the particulate matter exhaust emissions standard of 0.10 g/bhp-hr, without causing the applicable engine families to exceed other exhaust emissions standards;

(2) Complies with the life cycle cost requirements pursuant to section 85.1403(b)(1);

(3) Will not cause an unreasonable risk to the public health, welfare, or safety;

(4) Will not result in any additional range of parameter adjustability; and,

(5) Meets other requirements necessary for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR Sections 85.1401 through 85.1415).

Therefore, today's **Federal Register** notice announces certification of the above-described Johnson Matthey CCT™ kit for use in the urban bus retrofit/rebuild program as discussed below in section V.

V. Transit Operator Responsibilities

Today's **Federal Register** notice announces certification of the above-described CCT™ kit, when properly applied, as meeting the 0.10 g/bhp-hr particulate matter standard of the Urban Bus Retrofit/Rebuild Program.

In a **Federal Register** notice dated March 14, 1997 (62 FR 12166), EPA announced certification of a retrofit/rebuild kit produced by the Engelhard Corporation (the ETX™ kit). That certification means that urban bus operators using compliance program 1 must use equipment certified to the 0.10 g/bhp-hr standard when rebuilding or replacing applicable 1979 through 1989 model year DDC 6V92TA MUI model engines after September 14, 1997. The certified JMI equipment described in today's notice may be used by operators in compliance with the 0.10 g/bhp-hr standard. Operators using compliance program 2 having applicable engines may use the certified CCT™ kit and claim the certification PM level from Table 2 above, when calculating their Fleet Level Attained (FLA). Under program 2, an operator must use sufficient certified equipment so that its actual fleet emission level complies with the target level for its fleet.

As mentioned above, certification of the Engelhard ETX™ kit triggered the 0.10 g/bhp-hr standard for applicable 1979–1989 6V92TA MUI engines. That kit provides three power ratings: 253, 277, and 294 horsepower. JMI will offer the CCT™ kit in four power ratings: 253, 277, 294, and 325 hp. Certification of the CCT™ kit described in today's

Federal Register notice triggers the 0.10 g/bhp-hr standard for engines rated above 294 hp. This means that urban bus operators using compliance program 1 must use equipment certified to the 0.10 g/bhp-hr standard when rebuilding or replacing applicable engines above 294 hp after May 6, 1998.

Urban bus engines certified to meet California emissions standards are not applicable to the CCT™ kit discussed in today's **Federal Register** notice. Additionally, the 0.10 g/bhp–hr PM standard is not triggered for engines certified to meet California emission standards. Operators of such urban buses, who choose to comply with program 1, are not required to use equipment certified to the 0.10 g/bhp–hr PM standard until the standard has been triggered for such engines. Operators of urban buses having engines certified to meet California emission standards, and who choose to comply with program 2, may not use the CCT™ kit described in today's notice to meet program requirements.

As stated in the program regulations (40 CFR 85.1401 through 85.1415), operators must, beginning January 1, 1995, maintain records for each engine in their fleet to demonstrate that they are in compliance with the requirements of the Urban Bus Retrofit/Rebuild Program. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines. Urban bus operators using the supply option 2, as described previously in today's **Federal Register** notice, must be aware of their responsibility for maintenance of records pursuant to 40 CFR Sections 85.1403 through 85.1404, because they do not purchase the complete CCT™ kit from JMI. Urban bus operators using supply option 2 must be able demonstrate that all parts used in the rebuilding of engines are in compliance with program requirements. In other words, such urban bus operators must be able to demonstrate that all components of the kit certified in today's **Federal Register** notice are installed on applicable engines.

Dated: October 29, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–29397 Filed 11–5–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5917–6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; CECOS International, Inc. (CECOS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision on petition modification.

SUMMARY: Notice is hereby given that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to CECOS, for the Class I injection well located at Sulphur, Louisiana. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by CECOS, of the specific restricted hazardous waste identified in the exemption modification, into the Class I hazardous waste injection well at the Sulphur, Louisiana facility specifically identified in the modified exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public document was issued July 31, 1997, and closed on September 15, 1997. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of October 28,1997.

ADDRESSES: Copies of the modified petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

Oscar Ramirez, Jr.,

Acting Director, Water Quality Protection Division (6WQ).

[FR Doc. 97–29387 Filed 11–5–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5918–9]

National Environmental Justice Advisory Council; Notification of Meeting Public Comment Period(s) and Environmental Justice Enforcement Roundtable Open Meetings

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC) along with the subcommittees will meet on the dates and times described below in conjunction with a NEJAC and EPA-sponsored Environmental Justice Enforcement Roundtable. All times noted are Eastern Standard Time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are not available from the NEJAC. The NEJAC and subcommittee meetings will occur at the Regal University Hotel, 2800 Campus Walk Avenue, Durham, NC 27705–4479, telephone number: 919/383–8575. The NEJAC and EPA-sponsored Environmental Justice Enforcement Roundtable will occur at North Carolina Central University in Durham, NC.

The full NEJAC will convene Monday, December 8 from 9:00 a.m. to 10:30 a.m. and from 6:30 p.m. to 9:00 p.m., and Wednesday, December 10 from 9:00 a.m. to 5:00 p.m. and from 6:45 p.m. to 9:00 p.m. to follow-up on pending items from the May 1997 meeting, to hear a presentation from the newly created EPA's Office of Children Health Protection, and several NEJAC new business interest items. NEJAC will have a break in the meeting schedule Monday, December 8 at 10:30 a.m. to conduct a bus tour of local environmental justice sites. There will be public comment periods scheduled from 7:00 p.m.—9:00 p.m. on Monday, December 8 and on Wednesday, December 10.

The six subcommittees will meet Tuesday, December 9 from 9:00 a.m. to 6:30 p.m. Any member of the public wishing additional information on the subcommittee meetings should contact the specific Designated Federal Official at the telephone number listed below.

Subcommittee	Federal official and telephone number
Enforcement	Ms. Sherry Milan—202/564–2619.
Health & Research	Mr. Lawrence Martin—202/564–6497. Ms. Carol Christensen—202/260–2301.
International	Ms. Doña Canales—202/564–6442.
Indigenous Peoples	Ms. Elizabeth Bell—202/260–8106.
Public Participation	Ms. Renee Goins—202/564–2598.
Waste/Facility Siting	Mr. Kent Benjamin—202/260–2822.

The NEJAC and EPA-sponsored Environmental Justice Enforcement Roundtable will meet December 11–13, 1997 at North Carolina Central University in Durham, North Carolina. The public comment session is from 6:00 p.m.—9:00 p.m. on Thursday, December 11 and the Roundtable sessions are from 9:00 a.m.—5:00 p.m. on Friday, December 12 and Saturday, December 13.

Members of the public who wish to make a brief oral presentation should contact Tama Clare of Tetra Tech EM Inc. by November 28 to have time reserved on the agenda. Individuals or groups making oral presentations will be limited to a total time of five minutes. We should receive written comments of any length (at least 35 copies) by November 28, comments received after that date will be provided to the Council as logistics allow. Send your written comments to Tetra Tech EM Inc., 1593 Spring Hill Road, Suite 300, Vienna, VA 22182. NEJAC Registration Toll-Free Hotline Telephone number is 888/335–4299 or FAX: 703/287–8843. Internet E-mail address is Claret@ttemi.com.

FOR FURTHER INFORMATION CONTACT: For hearing impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, please call or fax Tama Clare of Tetra Tech EM Inc. at Phone: 703/287–8880 or Fax: 703/287–8843.

Registration for all events can be done through the Internet at our World Wide Web's home page via the following address: *http://www.ttemi.com/nejac* or through the NEJAC Registration Toll-free Hotline at 888/335–4299.

Dated: October 31, 1997.

Robert J. Knox,

Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 97–29398 Filed 11–5–97; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority; Comments Requested

October 30, 1997.

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, 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 January 5, 1998.

ADDRESSES: Direct all comments to Jerry Cowden, Federal Communications Commission, Room 240–B, 2000 M St., N.W., Washington, DC 20554, or via internet to jcowden@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection contact Jerry Cowden at 202–418–0447 or via internet at jcowden@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0308.

Title: Section 90.505 Developmental operation, showing required.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit, state, local or tribal government, not-for-profit institutions.

Number of Respondents: 100.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 200 hours.

Needs and Uses: The information collection requirement contained in Section 90.505 is needed to gather data on developmental programs for which a developmental authorization is sought. The information is used to evaluate the desirability of issuing such an authorization from spectrum use and interference potential considerations. If the information was not collected the value of developmental programs would be severely limited.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29302 Filed 11–5–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 30, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 5, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0004.

Title: Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (Second Memorandum Opinion and Order, ET Docket No. 93–2).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; businesses or other for profit; small businesses and organizations.

Number of Respondents: 126,108.

Estimated Time Per Response: 2 hours per response (avg.). This time will vary with the number of transmitters considered; e.g., a site with a single transmitter might require one hour to determine compliance, while a site with many co-located transmitters may require considerably more time.

Frequency of Response: On occasion reporting requirement and third party disclosure.

Total Annual Burden: 223,376 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: The estimated cost to respondents to perform the environmental evaluations per service varies. For example, complex situations that require a consulting engineer @ $100 per hour may require additional time to perform an evaluation; portable devices authorized under Part 2 of the Rules require a specific absorption rate of RF energy test with an average cost of approximately $5,000 per test; and other applicants will use OET Bulletin No. 65 to perform environmental evaluations, and will have no financial burden associated with the evaluation.

Needs and Uses: The National Environmental Policy Act of 1969 (NEPA) requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment. To meet its responsibilities under NEPA, the Commission has adopted revised RF exposure guidelines for purposes of evaluating potential environmental effects of RF electromagnetic fields produced by FCC-regulated facilities. The new guidelines reflect more recent scientific studies of the biological effects of RF electromagnetic fields. The use of these new guidelines will ensure that the public and workers receive adequate protection from exposure to potentially harmful RF electromagnetic fields. This Second Memorandum Opinion and Order addresses a number of concerns that were raised in petitions and comments received in response to the Report and Order.

The collections of environmental information required by Section 1.1307 of the Rules will be used by the Commission staff to determine whether the environmental evaluation is sufficiently complete and in compliance with the Commission's Rules to be acceptable for filing. The collection of this information is necessary to ensure compliance with NEPA, specifically, to minimize the potential for significant environmental impact from radiofrequency (RF) radiation from FCC-regulated transmitters and facilities.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29303 Filed 11–5–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

October 29, 1997.

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 8, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0589.

Title: FCC Remittance Advice and Continuation Sheet.

Form Number: FCC Form 159/159–C.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions.

Number of Respondents: 635,738.

Estimated Time Per Response: 0.5 hours.

Cost to Respondents: N/A.

Total Annual Burden: 317,869 hours.

Needs and Uses: FCC Form 159/159–C is required for payment of regulatory fees and for use when paying for multiple filings with a single payment instrument, or when paying by credit card. The forms require specific information to track payment history, to facilitate the efficient and expeditious processing of collections by a lockbox bank. The forms were revised to include Taxpayer Identification Number (TIN) which is used for anyone who requests services from the FCC. The Taxpayer Identification Number is required by the Debt Collection Improvement Act of 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29301 Filed 11–5–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 97–N–8]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the previously approved information collection entitled ''Personal Certification and Disclosure Forms.''

DATES: Interested persons may submit comments on or before January 5, 1998.

ADDRESSES: Address written comments and requests for copies of the information collection to Elaine L. Baker, Secretary to the Board, 202/408–2837, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Program Analyst, Compliance Assistance Division, Office of Policy, 202/408–2872, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

Section 7 of the Federal Home Loan Bank Act (Bank Act) and parts 931 and 932 of the Finance Board's regulations establish eligibility and reporting requirements and the procedures for electing and appointing Federal Home Loan Bank (FHLBank) directors. *See* 12 U.S.C. 1427; 12 CFR parts 931 and 932. The information collection contained in the FHLBank director personal certification and disclosure forms and §§ 932.18 and 932.21 of the Finance Board's regulations is necessary to enable the Finance Board to determine whether prospective and incumbent FHLBank directors satisfy the statutory and regulatory eligibility and reporting requirements. *See* Finance Board Forms E–1, E–2, A–1, and A–2; 12 CFR 932.18 (appointive directors) and 932.21 (elective directors). Finance Board staff uses the information collection to determine whether such individuals meet the statutory and regulatory eligibility and reporting requirements.

The likely respondents include only prospective and incumbent FHLBank directors. Currently, there are 109 elective directors and 72 appointive directors serving on the boards of directors of the FHLBanks. The information collection requires each respondent to complete and submit to the Finance Board for review a personal certification and disclosure form prior to election or appointment and, once elected or appointed, annually during the term of service. *See* 12 CFR 932.18(f)(1), (3) and 932.21(g)(1), (3). Incumbent directors also have a continuing obligation promptly to notify the Finance Board of any known or suspected ineligibility. *Id.* §§ 932.18(f)(2) and 932.21(g)(2).

The OMB number for the information collection is 3069–0002. The OMB clearance for the information collection expires on January 31, 1997.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 286, with one response per respondent. The estimate for the average hours per response is 1.3 hours. The estimate for the total annual hour burden is 376 hours (286 respondents x 1 response/respondent x approximately 1.3 hours). The estimated annualized cost to respondents of the information collection is $35,175.00.

C. Comment Request

The Finance Board requests written comments on the following: (1) whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

By the Federal Housing Finance Board.

Dated: October 31, 1997.

William W Ginsberg,

Managing Director.

[FR Doc. 97–29368 Filed 11–5–97; 8:45 am]

BILLING CODE 6725–01–U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011539–001.

Title: CMN/Ivaran/TMM Space Charter and Sailing Agreement.

Parties:

Companhia Maritima Nacional (''CMN'')
Ivaran Lines AS (''Ivaran'')
Transportacion Maritima Mexicana S.A. De C.V. (''TMM'').

Synopsis: The proposed modification changes the identity of A/S Ivarans Rederi to Ivaran Lines AS, changes the contact person for TMM, and clarifies that the geographic scope of the Agreement includes Venezuela.

Agreement No.: 203–011593.

Title: N.S. Inman Chassis Program L.L.C. Limited Liability Company Operating Agreement.

Parties:

COSCO Americas, Inc.
''K'' Line America
NYK Line (North America), Inc.
Yang Ming Line

Synopsis: The proposed Agreement would establish a container chassis pool which would primarily service the Norfolk Southern Railway facility at Atlanta, Georgia.

Dated: October 31, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–29329 Filed 11–5–97; 8:45 am]

BILLING CODE 6730–01–M

OFFICE OF GOVERNMENT ETHICS

Notice of Planned Termination of the Ethics Bulletin Board System

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics is planning to terminate The Ethics Bulletin Board System (TEBBS), its electronic bulletin board service for executive branch Government ethics information, effective January 1, 1998. In its place, OGE will continue to enhance its Internet World Wide Web

site, established last year, which contains most of the same electronic materials as well as additional informational resources and links to other pertinent Internet sites.

DATES: Comments by the agencies and the public are invited and should be submitted to OGE by December 8, 1997.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: James V. Parle.

FOR FURTHER INFORMATION CONTACT: James V. Parle, Chief, Office of Information Resources Management, Office of Government Ethics; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037; Internet E-mail address: usoge@oge.gov (for E-mail messages, the subject line should include the following reference—Comment on planned TEBBS termination).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective January 1, 1998, the Office of Government Ethics is planning to terminate the operation of its ''The Ethics Bulletin Board System'' (TEBBS). This notice is also being posted on TEBBS and OGE's Web site. In light of the creation last year of OGE's new Web site on the Internet, OGE has initially determined that TEBBS is no longer needed for electronic dissemination of OGE Government ethics information to the agencies and the public. Nonetheless, OGE invites comments from the agencies and the public on this planned termination of TEBBS, to be received by December 8, 1997, and will carefully consider any comments received before reaching a final decision. If OGE does decide to delay or reverse the planned termination of TEBBS, OGE will publish a further notice to this effect in the **Federal Register**, as well as posting it on both TEBBS and the OGE Web site.

The Office of Government Ethics introduced TEBBS to the executive branch ethics community at the September 1992 Government Ethics Conference. Since then, TEBBS has been used to disseminate electronic copies of OGE's executive branchwide ethics regulations, along with its advisory memoranda and letters. The TEBBS bulletin board also electronically provides access to various ethics program administration aids, such as ethics reporting forms, training materials, and OGE publications.

When OGE introduced the TEBBS service in 1992, electronic bulletin boards were the principal means for the Government to disseminate information electronically. However, since that time, information technology has changed significantly. Today, the World Wide Web on the Internet has become the primary electronic means of disseminating information. The Office of Government Ethics introduced its own Web site at the September 1996 Government Ethics Conference.

The current uniform resource locator (URL) address for OGE's Internet World Wide Web site is http://www.usoge.gov. The OGE Web site contains, either on-site or via links to other Web sites, most of the same electronic information that is available on TEBBS as noted above, as well as that on OGE's ethics CD–ROM, which OGE will continue to publish twice a year. The Web site also provides access to additional informational resources, such as electronic copies of pertinent Government ethics laws and Executive orders. Further, the Web site includes all the current OGE forms and publications in Adobe Acrobat portable document format (PDF) files that can be downloaded and used as needed by agencies and their employees. The Office of Government Ethics continually updates its Web site as new material becomes available for electronic dissemination.

Response to OGE's Web site has been better than expected. Since OGE put its Web site into service a year ago, the number of ''hits'' (visits to a page or downloading of a document) has grown steadily. The volume now averages some 34,000 ''hits'' a month. The Office of Government Ethics expects this number to continue to grow as it adds additional functionality and information to the site. Not surprisingly, there has been a corresponding decrease in the use of TEBBS. With OGE's limited resources, the largely redundant and less flexible capabilities offered by TEBBS has become too expensive to operate and maintain. The additional resources and capabilities of OGE's Web site should more than compensate for the termination of the TEBBS electronic bulletin board service.

Approved: October 31, 1997.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 97–29333 Filed 11–5–97; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center; Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Program Support Center (PSC), will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the PSC Reports Clearance Officer on (301) 443–2045.

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.

1. Application Packets for Real Property for Public Health Purposes—0937–0191—Revision

The Department of Health and Human Services Administers a program to convey or lease surplus real property to States and their political subdivisions and instrumentalities, to tax-supported institutions, and to nonprofit institutions to be used for health purposes. State and local governments and nonprofit organizations use these applications to apply for excess/surplus, underutilized/unutilized and off-site Government real property. Information in the application is used to determine eligibility to purchase, lease, or use property under the provisions of the surplus property program. The instructions have been reduced from six (6) packets to three (3) to streamline and consolidate the health and homeless application processes. The Environmental information form, used to evaluate potential environmental effects of a proposal as required by the National Environmental Policy Act of 1969, is being revised to provide factual data to support the response to each question and to leave no doubt about what conditions or adverse effects are

being considered as well as to make it more user friendly. *Respondents:* State, Local or Tribal Governments; not-for-profit institutions; *Total Number of Respondents:* 114 per calendar year; *Number of Responses per Respondent:* One response per request; Average *Burden per Response:* 200 hours; Estimated *Annual Burden:* 22,800 hours.

Send comments to Douglas F. Mortl, PSC Reports Clearance Officer, Room 17A08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 30, 1997.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 97–29349 Filed 11–5–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F-0440]

Cytec Industries, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cytec Industries, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,6-hexanediamine, *N*,*N*′-bis(2,2,6,6-tetramethyl-4-piperidinyl)-, polymers with morpholine-2,4,6-trichloro-1,3,5-triazine reaction products, methylated, as a stabilizer for olefin polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4562) has been filed by Cytec Industries, Inc., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 1,6-hexanediamine, *N*,*N*′-bis(2,2,6,6-tetramethyl-4-piperidinyl)-, polymers with morpholine-2,4,6-trichloro-1,3,5-triazine reaction products, methylated, as a stabilizer for olefin polymers complying with 21 CFR 177.1520 intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: October 16, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–29347 Filed 11–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Peripheral and Central Nervous System Drugs Advisory Committee scheduled for November 18 and 19, 1997. The meeting was announced in the **Federal Register** of October 17, 1997 (62 FR 54118).

FOR FURTHER INFORMATION CONTACT: Ermona B. McGoodwin or Danyiel D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12543.

Dated: October 30, 1997.

Michael A. Friedman.

Deputy Commissioner for Operations.

[FR Doc. 97–29348 Filed 11–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Phase II Clinical Trails of New Chemopreventive Agents.

Date: November 18, 1997.

Time: 9:00 a.m. to adjournment.

Place: Double Tree Hotel-Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Wilna Woods, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622B, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7903.

Purpose/Agenda: To review, discuss and evaluate responses to Request for Proposal.

Name of SEP: Phase I Clinical Studies of Chemopreventive Agents.

Date: November 29–20, 1997.

Time: November 19–9:00 a.m. to recess; November 20–9:00 a.m. to adjournment.

Place: Double Tree Hotel-Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Wilna Woods, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622B, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7903.

Purpose/Agenda: To review, discuss and evaluate responses to Request for Proposal.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meetings will be closed in accordance with the provisions set for in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29359 Filed 11–5–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Preclinical Toxicology Studies of Chemopreventive Agenda.

Date: November 14, 1997.

Time: 9:00 a.m. to Adjournment.

Place: Executive Plaza North, Conference Room J, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Lalita Palekar, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, EPN, Room 622B, Bethesda, MD 20892–7405, Telephone: 301/496–7575.

Purpose/Agenda: To review, discuss and evaluate responses to a Request for Proposal.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394; Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29360 Filed 11–5–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Phase III Science Enrichment Program (Telephone Conference Call).

Date: November 17, 1997.

Time: 8:00 a.m. to Adjournment.

Place: National Cancer Institute, Executive Plaza North, Conference Room C, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Wilna Woods, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622B, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7903.

Purpose/Agenda: To review, discuss and evaluate responses to Request for Proposal.

This notice is being published less than 15 days to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29363 Filed 11–5–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute (NCI) Board of Scientific Advisors on November 13–14, 1997 in Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

This meeting will be open on November 13 from 8 a.m. to recess and on November 14 from 8:00 a.m. to adjournment. Agenda items will include the following: NCI Director's Report; Deputy Director of Extramural Science's Reports; Legislative Update; Scientific Presentation(s); Concept Reviews; program review updates and reports, and discussions pertaining to new and ongoing Board business. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations and additional information pertaining to the meeting should contact Dr. Paulette S. Gray, Executive Secretary, NCI Board of Scientific Advisors, 6130 Executive Blvd., EPN, Rm. 600C, Bethesda, MD 20892 (301–496–4218).

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: October 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29364 Filed 11–5–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Purusant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute, Frederick Cancer Research and Development Center Advisory Committee.

The open portion of the meeting will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person in advance of the meeting.

Committee Name: Frederick Cancer Research and Development Center Advisory Committee.

Date: December 11–12, 1997.

Palce: Frederick Cancer Research and Development Center, Building 549, Executive Board Room, Frederick, Maryland 21702–1201.

Open: December 11—8:30 a.m.–10:00 a.m..

Agenda: Discussion of administrative matters such as future meetings, budget, and information items related to the operation of the NCI Frederick Cancer Research and Development Center.

Closed: December 11—10 a.m. to recess, December 12–8:30 a.m. to adjournment.

Agenda/Purpose: Discussion of previous site visit report and response for the Gene Regulation and Chromosome Biology Laboratory and Molecular Aspects of Drug Design Section both under contract with ABL—Basic Research Program review held June 9–10, 1997. The majority of the closed session will be devoted to a site review of the Molecular Basis of Carcinogenesis Laboratory with ABL—Basic Research Program contract.

Contact Person: Donald F. Summers, M.D., Acting Executive Secretary, Frederick Cancer Research and Development Center, P.O. Box B, Frederick, MD 21702–1201, Telephone: 301–846–5096.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The

report and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individual associated with the programs, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog Of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research, 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research, 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93,399, Cancer Control)

Dated: October 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29365 Filed 11–5–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Acrylonitrile Study Advisory Panel, National Cancer Institute, National Institutes of Health, on Thursday, December 11, 1997. The meeting will be held in Conference Room G, Executive Plaza North, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public from 10:00 a.m. to adjournment to discuss results of the epidemiologic study of workers exposed to acrylonitrile, describe plans for worker notification of the results, and present plans for future mortality follow-up of the cohort. Attendance by the public will be limited to space available.

Mrs. Linda Quick-Cameron, Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 601, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Aaron Blair, Executive Secretary, Division of Cancer Etiology, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 415, 6130 Executive Boulevard, Rockville, Maryland 20892–7364 (301/496–9093) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact Dr. Aaron Blair, (301) 496–9093, in advance of the meeting.

Dated: October 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29366 Filed 11–5–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings in conjunction with the National Institute of Dental Research and the National Institute of Arthritis and Musculoskeletal and Skin Diseases:

Name of SEP: Tissue Engineering, Biomimetics, and Medical Implant Science Session I, NHLBI/NIDR/NIAMS.

Date: January 28–29, 1998.

Time: 7:00 p.m. EST.

Place: Bestheda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Diane M. Reid, M.D., Two Rockledge Center, Room 7182, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Tissue Engineering, Biomimetics, and Medical Implant Science Session II, NHLBI/NIDR/NIAMS.

Date: January 29–30, 1998.

Time: 7:00 p.m. EST.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Diane M. Reid, M.D., Two Rockledge Center, Room 7182, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: October 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29361 Filed 11–5–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Sarcoidosis Genetic Linkage Consortium.

Dates: December 12, 1997.

Time: 8:30 a.m. EST.

Place: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0266.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: October 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29362 Filed 11–5–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1–GRB–6–J–1.

Date: December 3, 1997.

Time: 11:30 AM.

Place: Room 6as–25E, Natcher Building, NIH (Telephone Conference Call).

Contact Person: Sharee Pepper, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7798.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personnel information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hemotology Research, National Institutes of Health)

Dated: October 28, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29367 Filed 11–5–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS)

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

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 Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984 (formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (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

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784 / 915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 / 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 / 908–526–2400

(formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734
MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515 / 800–526–6339
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213
Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 612–636–7466
Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835 / 309–671–5199
MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808 (x4512)
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361 / 801–268–2431
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 1518 Pontius Ave., Los Angeles, CA 90025, 310–312–0056, (Formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400 / 800–541–7891
PharmChem Laboratories, Inc., 1505-A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200 / 800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 / 800–882–7272
Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784 / 800–888–4063 (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106, (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947/972–916–3376, (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474/412–920–7733, (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293/314–991–1311, (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 , (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Scientific Testing Laboratories, Inc. 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788/254–771–8379
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800/800–999-LABS
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006, (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484/610–631–4600, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379, (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital Toxicology Laboratory, P.O. Box 205, 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
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 / 800–966–2211, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300, (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratories for the conduct of forensic urine drug testing required by Department of Transportation regulations:

Dynacare Kasper Medical Laboratories, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876 / 403–451–3702

MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–29414 Filed 11–5–97; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability and Pubic Comment Period on Draft Protocols for Scientific Studies To Be Performed at Ward Valley, California

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of 30 day public comment period.

SUMMARY: The Department of Interior (DOI) and Bureau of Land Management (BLM) announce the availability of draft Sampling Protocols for scientific studies to be performed at the Ward Valley site, The draft Sampling Protocols have been prepared pursuant to a contract with BLM by two scientists who served on a National Academy of Sciences (NAS) panel on Ward Valley. The NAS panel made recommendations in 1995 that provide the basis for testing and analysis of tritium and related substances. The testing is intended to investigate the extent to which tritium released into the atmosphere in the 1950's and 1960's has migrated below the surface of the soil at the Ward Valley site.

DATES: Public comments on the draft Sampling Protocols must be received by December 8, 1997.

ADDRESSES: Copies of the draft Sampling Protocols may be obtained upon request. Submit requests to: Ward Valley Project Coordinator, 2135 Butano Drive, Sacramento. CA 95825–0451. The draft Sampling Protocols are available on the Internet at: www.ca.blm.gov.

FOR FURTHER INFORMATION CONTACT: Jack Mills, Contract Officer Representative, U.S.D.I., Bureau of Land Management, California State Office, 2135 Butano Drive, Sacramento, California 95825, tel: (916) 978–4636.

SUPPLEMENTARY INFORMATION: DOI and BLM are preparing a Supplemental Environmental Impact Statement (SEIS) on a proposed land transfer to the State of California for the purpose of developing a low-level radioactive waste facility at Ward Valley. The site of the proposed federal transfer is located in San Bernardino County, California, approximately 20 miles west of the City of Needles. Following receipt and consideration of comments, it is intended that Sampling Protocols will be finalized and testing carried out pursuant to the final Sampling Protocols. The proposed testing is subject is subject to an environmental assessment (EA) prepared pursuant to the National Environmental Policy Act. The EA is being released for public review and comment on this date. In addition to this opportunity to review the draft protocol and comment under this notice, the public will also have the opportunity to review and comment on the results of the tritium, and related materials testing and analysis in the draft SEIS.

Duane A. Marti,

Acting Deputy State Director for Natural Resource.

[FR Doc. 97–29233 Filed 11–5–97; 8:45 am]

BILLING CODE 4310–40–P–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability and Public Comment Period on Environmental Assessment (EA) of Tritium and Related Materials Testing on Public Lands in Ward Valley, San Bernardino County, California

AGENCY: California State Office, Bureau of Land Management, DOI.

ACTION: Notice of 30 day public comment period.

SUMMARY: The Department of the Interior (DOI), Bureau of Land Management (BLM) has prepared an EA of proposed plans regarding tritium and related materials testing in Ward Valley. The proposed plans were separately prepared by DOI/BLM and the State of California, Department of Health Services.

EFFECTIVE DATE: Public comments on the EA must be received by December 8, 1997.

SUPPLEMENTARY INFORMATION: The purpose of this comment period is to ensure that the public has sufficient opportunity to review and comment on all pertinent information on the impacts associated with separate federal and state proposals for testing for tritium and related materials in Ward Valley. The testing for tritium and related materials will be carried out to effectuate the recommendations of a National Academy of Sciences panel. Data obtained from the federal sampling and analysis, and from the State's if available, will be included in a draft Supplemental Environmental Impact Statement (SEIS), analyzing the proposed transfer of federal land to the State of California for construction of a Low-Level Radioactive Waste Disposal Facility.

ADDRESSES: Copies of the EA may be obtained upon request. Submit requests to: Ward Valley Project Coordinator, 2135 Butano Drive, Sacramento, CA 95825–0451. The EA is available on the Internet at: www.ca.blm.gov.

FOR FURTHER INFORMATION CONTACT: Jack Mills, Contract Officer Representative, U.S.D.I., Bureau of Land Management, California State Office, 2135 Butano Drive, Sacramento, California 95825, tel: (916) 978–4636.

Duane A. Marti,

Acting Deputy State Director for Natural Resources.

[FR Doc. 97–29234 Filed 11–5–97; 8:45 am]

BILLING CODE 4310–40–P–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–387]

North American Free Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Accelerated Elimination of U.S. Tariffs on Certain Articles From Mexico, Round Two

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: October 30, 1997.

SUMMARY: Following receipt on October 20, 1997, of a request from the Office of the United States Trade Representative

(USTR), the Commission instituted investigation No. 332–387, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332 (g)), to advise the President, with respect to each dutiable article listed in Annex I of the USTR's notice published in the **Federal Register** of October 21, 1997 (62 FR 54671), of its judgment as to the probable economic effect of the immediate elimination of the U.S. tariff under the North American Free Trade Agreement (NAFTA) on domestic industries producing like or directly competitive articles and on consumers. Annex I is available from the USTR Internet home page at http://www.ustr.gov and from the Commission Internet home page at http://www.usitc.gov.

The USTR asked that the Commission provide its advice not later than 120 days following the Commission's receipt of the request, or by February 17, 1998, and has indicated that it may classify all or part of the Commission's report as Confidential.

FOR FURTHER INFORMATION CONTACT: General information may be obtained from the project leader, Carl Seastrum (202–205–3493), Minerals, Metals, Machinery, and Miscellaneous Manufactures Division, Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact William Gearhart of the Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. For information on a product basis, contact the appropriate member of the Commission's Office of Industries as follows:

- Agriculture and Forest Products Division, Stacey Linn (202–205–3317).
- Energy, Chemicals, and Textiles Division, Elizabeth Howlett (202–205–3365).
- Minerals, Metals, Machinery, and Miscellaneous Manufactures Division, Josephine Spalding (202–205–3498).
- Services, Electronics, and Transportation Division, Heidi Colby (202–205–3391).

Background: As stated by the USTR in a letter dated October 20, 1997, the Governments of the United States, Mexico, and Canada have agreed to enter into consultations to consider the acceleration of the elimination of the import duty on certain articles. The USTR further stated that the President is authorized by section 201(b) of the North American Free Trade Agreement Implementation Act, subject to the consultation and lay-over requirements of section 103(a) of the Act, to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States, Mexico, and Canada under Article 302(3) of the NAFTA. Section 103(a) requires that the President obtain advice regarding the proposed action from the United States International Trade Commission. The accelerated elimination of tariffs in this second round of negotiations between the United States and Mexico will be pursued on a reciprocal basis in response to petitions submitted to the Governments of Canada, Mexico, and the United States. The USTR included with its request a list of products to be considered for immediate reciprocal elimination of tariffs.

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on January 7, 1998, and continuing on January 8 if an additional day is needed. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, not later than 5:15 p.m., December 11, 1997. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., December 12, 1997; the deadline for filing post-hearing briefs or statements is 5:15 p.m., January 14, 1998.

In the event that, as of the close of business on December 16, 1997, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after December 16, to determine whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by the public. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than the close of business on January 14, 1998. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

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).

Issued: October 31, 1997.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–29378 Filed 11–5–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on December 6, 1997, from 10:00 a.m. until 4:00 p.m. at The University of Chicago Conference Center, 450 North Cityfront Plaza Drive, Chicago, Illinois 60611. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's scope of authority is: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency of occurrence of DNA profiles calculated from pertinent population database(s); To recommend standards

for acceptance of DNA profiles in the FBI's Combined DNA Index System (CODIS) which take account of relevant privacy, law enforcement and technical issues; and, To make recommendations for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics to be discussed at this meeting include: a review of minutes from the September 23, 1997, meeting; discussion of comments on the Quality Assurance Standards for DNA Testing Laboratories, as approved at the February 22, 1997 meeting; and a discussion of topics for the next DNA Advisory Board meeting.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meets. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type-written on 8½″ × 11″ xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Dr. Dwight E. Adams, Chief, Scientific Analysis Section, Laboratory Division—Room 3266, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535–0001, (202) 324–4416, FAX (202) 324–1462.

Dated: November 3, 1997.

Dwight E. Adams,

Chief, Scientific Analysis Section, Federal Bureau of Investigation.

[FR Doc. 97–29379 Filed 11–5–97; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

Date: November 3, 1997.

The Department of Labor has submitted the Work Opportunity Tax Credit (WOTC) and Welfare-to-Work (W-to-W) Tax Credit Addendum to the first edition of ETA Handbook No. 408, July 1997, administrative forms and information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by November 10, 1997. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Theresa O'Malley ((202) 219–5096 x 166).

Comments and questions about the WOTC/W-to-W ICR should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, D.C. 20503 ((202) 395–7316).

The Office of Management and Budget 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, and including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarification 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, e.g., permitting submissions of responses.

Agency: Employment and Training Administration.

Title: Work Opportunity Tax Credit (WOTC) and Welfare-to-Work Tax Credit.

OMB Number: 1205–0371.

Agency Number: ETA 9057–59; 9061–9063 and 9065.

Number of Respondents: 52.

Estimated Time per Response: 20 minutes.

Total Burden Hours: 2,600.

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Description: The Employment and Training Administration (ETA) has oversight responsibilities for the Work Opportunity Tax Credit (WOTC) under the Small Business Jobs Protection Act of 1996 (P.L. 104–188) and the Welfare-to-Work Tax Credit under the Taxpayer Relief Act of 1997 (P.L. 105–34). Data collected on the WOTC and the W-to-W will be collected by the State Employment Security Agencies and provided to the U.S. Employment Service, Division of Planning and Operations, Washington, DC, through the appropriate Department of Labor regional office. The data will be use, primarily, to supplement IRS Form 8850, help expedite the processing of, either, employer requests for Certifications generated through IRS From 8850 or issuance of Conditional Certifications (CCs) and processing of employer requests for Certifications as a result of individuals' bearing SESAs or participating agencies' generated CCs, help streamline SESAs verification mandated activities, aid and expedite the preparation of the quarterly reports, and provide a significant source of information for the Secretary's Annual Report to Congress on the WOTC program and the W-to-W Tax Credit. The data recorded through the use of these forms will also help in the preparation of an annual report to the Committee House Ways and Means of the U.S. House of Representatives.

John Saracco,

Project Manager, Office of Internet Services and Information Management.

[FR Doc. 97–29372 Filed 11–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to a three-year term on the Department's Performance Review Board: David C. Zeigler.

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Human Resources, Room C5526, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone: (202) 219–6551.

Signed at Washington, D.C., this 31st day of October, 1997.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 97–29369 Filed 11–5–97; 8:45 am]

BILLING CODE 4510–33–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications Under the Federal Unemployment Tax Act of 1997

On October 31, 1997, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to State unemployment funds to obtain certain credits for their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Dated: November 3, 1997.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor.

U.S. Department of Labor

Secretary of Labor

Washington, D.C.

October 31, 1997.

The Honorable Robert E. Rubin,
Secretary of the Treasury, Washington, D.C. 20220

Dear Secretary Rubin: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending on October 31, 1997. One is required with respect to normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986 (IRC), and the other is required with respect to additional tax credit by Section 3303 of the Code. Both certifications list all jurisdictions except the State of Washington. Washington is omitted from both certifications because we have not yet exhausted the administrative process regarding issues arising in that State under the requirements of Section 3304(a) of the IRC. These omissions, therefore, do not constitute final denials of certification. If these issues are resolved satisfactorily, I will forward to you the certifications with respect to Washington.

Sincerely,

Alexis M. Herman,

Enclosures

United States Department of Labor

Office of the Secretary

Washington, D.C.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 1997:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, D.C., on October 31, 1997.

Alexis M. Herman,

Secretary of Labor.

United States Department of Labor

Office of the Secretary

Washington, D.C.

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the International Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1997, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine

Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 1997.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 97–29371 Filed 11–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies. The UIPLs described below are published in the **Federal Register** in order to inform the public.

UIPL 41–97

UIPL 40–79, dated August 3, 1979, set forth the Department of Labor's position on whether Head Start agencies are ''educational institutions'' for purposes of the ''between and within terms denial'' provisions of Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA). This section of FUTA has been amended since that time. As such, questions have been raised as to whether the treatment of Head Start services has changed as a result of the amendments. UIPL 41–97 reiterates the Department's position regarding Head Start agencies and provides specific discussion of the application of the between and within terms denial to Head Start program personnel.

UIPL 44–97

The Balanced Budget Act of 1997 (BBA) and the Taxpayer Relief Act of 1997 (TPRA), both enacted on August 6, 1997, made several changes affecting the UC program. UIPL 44–97 provides information on the amendments made by the BBA and the TPRA. This UIPL also discusses whether States are required to amend their UC laws regarding disclosure of UC information, Reed Act transfers, and levy on payments of UC as a result of the amendments to these Acts.

Dated: October 31, 1997.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor.

U.S. Department of Labor, Employment and Training Administration, Washington, D.C. 20210
Classification: UI
Correspondence Symbol: TEUL
Date: 09/30/97
Rescissions: None
Expiration Date: Continuing
Directive: Unemployment Insurance Program Letter No. 41–97
To: All State Employment Security Agencies
From: Grace A. Kilbane, Director, Unemployment Insurance Service
Subject: Application of Between and Within Terms Denial to Head Start Program Personnel

1. *Purpose.* To clarify the application of the between and within terms denial provisions of Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) to Head Start program personnel.

2. *References.* Section 3304(a)(6)(A), FUTA; P.L. 94–566; P.L. 95–19, *Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976—P.L. 94–566* and Supplement 4, *1976 Draft Legislation,* dated August 26, 1977; Unemployment Insurance Program Letter (UIPL) No. 40–79, dated August 3, 1979; UIPL No. 41–83, dated September 13, 1983; UIPL No. 30–85, dated July 12, 1985; UIPL No. 15–92, dated January 27, 1992; and UIPL No. 43–93, dated September 13, 1993.

3. *Background.* UIPL No. 40–79 set forth the Department's position on whether Head Start agencies are ''educational institutions'' for purposes of the ''between and within terms denial'' provisions required and/or allowed by Section 3304(a)(6)(A), FUTA. Subsequent amendments to the ''between and within terms denial'' provisions have raised questions about whether the treatment of Head Start services has changed. This UIPL reiterates the Department's position and provides specific discussion of the amendments made following the issuance of UIPL 40–79.

4. *Discussion.* Section 3304(a)(6)(A), FUTA, requires, as a condition for employers in a State to receive credit against the Federal unemployment tax, that the State law provide that unemployment compensation (UC) be payable based on services to which Section 3309(a)(1), FUTA, applies, in the same amount, on the same terms, and subject to the same conditions as UC payable on the basis of other service subject to State law. The major mandates of this Section are: (1) coverage of services performed for State and local governments and their instrumentalities and nonprofit organizations as defined under Section 3309(a)(1), FUTA; (2) equal treatment in the payment of UC to employees of such entities; and (3) denial of UC based on certain educational services performed for such entities between and within academic terms. These conditions are required for employers in a State to receive credit against the Federal unemployment tax. UIPL No. 43–93 describes the optional and required denial provisions in clauses (i) through (vi) of Section 3304(a)(6)(A), FUTA. The six clauses are described below:

- Clause (i) requires, unless the specified conditions are met, the denial between two successive academic years or terms based on instructional, research, and principal administrative services performed for an educational institution.
- Clause (ii) permits, under specified conditions, the between years or terms denial based on all other (i.e., ''nonprofessional'') services performed for an educational institution, and retroactive payment based on those services, if no work is available in the second term, and the individuals have otherwise met the eligibility requirements.
- Clause (iii) requires the within terms denial of benefits during an established and customary vacation period or holiday recess based on all services performed for an educational institution.
- Clause (iv) requires the between and within terms denial of benefits based on all services performed in an educational institution while in the employ of an educational service agency (ESA).
- Clause (v) permits the State to implement the denial provisions of (i) through (iv) for services performed by governmental entities or nonprofit organizations if such services are provided to or on behalf of an educational institution.
- Clause (vi) permits the State to make the between and within terms denial provisions of clauses (iii) and (iv) optional based on the ''nonprofessional'' services described in clause (ii).

5. *Interpretation and Application.* The between and within terms denial provisions apply only to services performed (1) for an educational institution, (2) in an educational

institution while employed by an ESA, or (3) to or on behalf of an educational institution by a governmental entity or nonprofit organization.

Whether Head Start Agencies are Educational Institutions under Clauses (i) and (ii) of Section 3304(a)(6)(A), FUTA. Head Start programs are comprehensive developmental programs designed to meet children's needs in the health (medical, dental, mental, nutritional), social, and education areas. The goal is child adjustment and development at the emotional and social levels, rather than school-type training.

Whether Head Start agencies are ''educational institutions'' was discussed in UIPL 40–79. That UIPL stated that Head Start programs operated by Community Action Groups do not meet the criteria of ''educational institutions,'' and the between and within terms denial does not, therefore, apply to services performed for such groups. UIPL 40–79 stated, however, that when a local board of education operates a Head Start program as an integral part of the school system in facilities of an educational institution, with Head Start workers as employees of the board and the schools in every respect, subject to all employing policies, such as hiring, firing, working conditions, as other employees performing services for the educational institution, then such workers are considered to be employed by an educational institution. As such, these workers are subject to the denial provisions in the same manner as are all other educational institution employees. This remains the Department's position.

Application of Clauses (iv) and (v), Section 3304(a)(6)(A), FUTA to Head Start Services. UIPL 40–79 did not address clauses (iv) and (v), as these provisions were not added until 1983. UIPL 41–83 advised the States of the addition of these clauses to Federal law, but did not discuss Head Start agencies.

Clause (iv) applies to services performed for an ESA. Clause (iv) defines an ESA as ''a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.'' Since Head Start agencies do not exist exclusively for the purpose of providing services to educational institutions, they are not ESAs.

Clause (v) permits States to apply the between and within terms denial to services ''provided to or on behalf of'' an educational institution by a governmental entity or nonprofit organization to which Section 3309(a)(1), FUTA, applies. UIPL 41–83 states that the words ''provided to'' require only that the services provided to the educational institution give some benefit or support to the institution. The words ''on behalf of'' are more restrictive. They apply—

to those employees of a governmental entity or nonprofit organization who perform services as an agent of or on the part of an educational institution. This situation could arise, therefore, only where an employee of a governmental entity or nonprofit organization performed services as an agent of or on the part of an educational institution in such a representative capacity.

Whether services are ''provided to or performed on behalf'' of an educational institution depends on the facts present in each individual case. Thus, if State law contains a provision implementing optional clause (v), a case-by-case determination must be made to determine if Head Start services are ''provided to or on behalf of an educational institution,'' assuming that the Head Start agency is a governmental entity or nonprofit organization to which Section 3309(a)(1), FUTA, applies.

If a State law implements optional clause (v), the application to Head Start programs may be limited as to scope and/or time by a State, but, as discussed in UIPL 43–93, the limitation must be uniformly applied throughout the State. A State may not treat Head Start services ''provided to or on behalf of'' one school district differently from Head Start services ''provided to or on behalf of'' those performed for another school district. Also, a State may not treat the services performed for a governmental entity differently from services performed for a nonprofit organization.

6. *Action Required.* Administrators are to provide this information to appropriate staff.

7. *Inquiries.* Inquiries should be directed to the appropriate Regional Office.

U.S. Department of Labor, Employment and Training Administration, Washington, D.C. 20210
Classification: UI
Correspondence School: TEUL
Date: October 9, 1997
Rescissions: None
Expiration Date: Continuing
Directive: Unemployment Insurance Program Letter No. 44–97
To: All State Employment Security Agencies
From: Grace A. Kilbane, Director, Unemployment Insurance Service
Subject: The Balanced Budget Act of 1997 and the Taxpayer Relief Act of 1997

1. *Purpose.* To advise the States of amendments made to Federal law by the Balanced Budget Act of 1997 and the Taxpayer Relief Act of 1997 affecting the Federal-State Unemployment Compensation (UC) program.

2. *References.* The Balanced Budget Act of 1997 (BBA), P.L. 105–33; the Taxpayer Relief Act of 1997 (TPRA), P.L. 105–34; the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104–193; the Internal Revenue Code of 1986 (IRC), including the Federal Unemployment Tax Act (FUTA); the Social Security Act (SSA); and Unemployment Insurance Program Letters (UIPLs) Nos. 28–87, 45–89, 12–91, 11–92 and 37–96.

3. *Background.* The BBA and the TPRA, both enacted on August 6, 1997, made several changes affecting the UC program. This UIPL provides information on eleven amendments made by the BBA and four amendments made by the TPRA. The amendment discussed in item 4.a., related to disclosure of UC information, may require States to amend their laws to meet Federal UC law requirements. In addition, States will need to amend their laws to implement the special Reed Act transfers discussed in item 6.b. Finally, States will need to determine whether they need to amend their laws to permit the continuous levy discussed in item 12.

4. *Sections 5201 and 5533, BBA: National Directory of New Hires (''National Directory'').*

a. *Section 5201, BBA, Disclosure to National Directory.* Section 303(h)(1), SSA, as amended by the PRWORA, requires States, as a condition of receiving UC administrative grants, to disclose wage and claim information to the Secretary of Health and Human Services for purposes of the National Directory. Section 303(h)(1)(C), as amended by the PRWORA, also required States to establish such safeguards as the Secretary of Labor determines are necessary to insure that such information is used ''only for purposes of *section 453(i)(1) [SSA] in carrying out the child support enforcement program under title IV*'' of the SSA. (Emphasis added.) The BBA deleted the underscored language and substituted ''subsections (i)(1), (i)(3) and (j) of section 453.'' This amendment makes clear that States must authorize the disclosure of UC information to the National Director for:

- Use by programs funded under the Transitional Assistance to Needy Families program, the child support enforcement program, and any ''other purposes'' specified in Section 453. (Section 453(i)(1), SSA.) The ''other purposes'' are specified in Section 453(i)(3) and (j), SSA, described below.
- Use in the administration of the earned income tax credit by the Internal Revenue Service (IRS). (Section 453(i)(3), SSA.)
- Verification of information in the National Directory by the Social Security Administration; comparisons with the Federal Case Registry of Child Support Orders and other child support enforcement purposes; use by the Social Security Administration; and research related to Transitional Assistance to Needy Families or child support enforcement. In the case of research, personal identifiers may not be used. (Section 453(j), SSA.)

As no effective date is provided, this amendment is effective as of the date of enactment of the BBA. However, as discussed in UIPL 37–96, pages 6 and 7, the effective date of the disclosure requirements in Section 303(h), SSA, for UC conformity purposes is either October 1, 1997, or, if the State qualifies for a grace period, January 1, 1998.

States will need to review their UC laws and regulations to determine if their laws permit disclosure in view of the above requirement concerning redisclosures of information provided to the National Directory. Each State must take all actions necessary to ensure that it will make such disclosures by the effective date discussed in the previous paragraph.

b. *Section 5533, BBA: Technical Amendment.* Section 453A, SSA, requires each State to establish a Directory of New Hires. Section 453A(g)(2)(B), SSA, as added by PRWORA, specifically cited a provision of Federal UC law:

Wage and Unemployment Compensation Information.—The State Directory of New Hires shall, on a quarterly basis, furnish to the National Directory of New Hires *extracts of the reports required under section 303(a)(6) [SSA] to be made to the Secretary of Labor* concerning the wages and unemployment compensation paid to

individuals, by such dates, in such format, and containing such information as the Secretary of Health and Human Services shall specify in regulations. [Emphasis added.]

Since the Secretary of Labor does not require the submittal of data on individuals under Section 303(a)(6), SSA, this provision created a technical problem. The BBA deleted the underscored language and substituted ''information.'' This amendment does not affect what information must be provided to the Secretary of Health and Human Services. Nor does it change the fact that both the FUTA and the SSA continue to require UC agencies to provide wage and claim information to the State directory. *See* UIPL 37–96.

5. *Section 5401, BBA: Base Periods and the Pennington Case.* In 1994 and 1997, the U.S. Court of Appeals for the Seventh Circuit issued two opinions in litigation commonly known as *Pennington.* 22 F.3d 1376 (7th Cir. 1994), 110 F.3d. 502 (7th Cir. 1997). In its 1994 decision, the Court decided that a State's base period was not an eligibility requirement, but instead was a ''method of administration'' under Section 303(a)(1), SSA, and, therefore, subject to Federal jurisdiction. In its 1997 decision, the Court ruled that Illinois' base period, consisting of the first four of the last five completed calendar quarters, was not consistent with the ''methods of administration'' requirement. This was because the existence of the lag period between the base period and benefit year meant some claimants had to wait for their recent wages to fall within the based period to qualify for UC. As a result of these decisions, States anticipated that they might be required to provide for alternative base periods to reduce the lag.

The BBA clarifies that the base period is not subject to the ''methods of administration'' requirement. Therefore, in the Department's view, this legislation frees States to determine their base periods without regard to the ''methods of administration'' requirement. Section 5401, BBA, provides as follows:

(a) In General. No provision of a State law under which the base period for such State is defined or otherwise determined shall, for purposes of section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)), be considered a provision for a method of administration.

(b) Definitions. For purposes of this section, the terms ''State law'', ''base period'', and ''State'' shall have the meanings given them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [EUCA] (26 U.S.C. 3304 note.)

(c) Effective Date. This section shall apply for purposes of any period beginning before, on, or after the date of the enactment of this Act.

''State law,'' as defined in Section 205(10), EUCA, ''means the unemployment compensation law of the State, approved by the Secretary under section 3304'' of the FUTA. ''Base period,'' as defined in Section 205(6), EUCA, ''means the base period as determined under applicable State law for the benefit year.'' ''State,'' as defined in Section 205(8), EUCA, includes the 50 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

This amendment does not require States to amend their laws.

6. *Sections 5402 and 5403, BBA: Increase in Federal Unemployment Account (FUA) Ceiling and Special Distribution to States from the Unemployment Trust Fund.* Section 903, SSA, provides that when, among other things, three accounts in the Unemployment Trust Fund reach their statutory limits, the excess amounts will be transferred to the States. These are called ''Reed Act'' distributions. The three accounts are the Employment Security Administration Account (ESAA), which pays for the administration of the UC and employment service programs; the Extended Unemployment Compensation Account, which pays for the Federal share of extended benefits; and the FUA, which provides for advances to States for the payment of UC.

a. *Section 5402, BBA: Increase in FUC Ceiling.* Prior to amendment, the balance in the FUA as of the end of any Federal fiscal year (September 30) could not exceed 0.25 percent of the total wages subject to contributions under all State UC laws. The BBA changes this maximum balance to 0.5 percent effective October 1, 2001.

b. *Sections 5403, BBA: Special Distribution to States from the Unemployment Trust Fund.* The BBA amended Section 903 of the SSA to cap the amount of Reed Act transfers made with respect to the Federal fiscal years ending in 1999, 2000 and 2001 at $100,000,000 per year. Each State's share of these transfers will be based on the ratio of the amount of ''funds to be allocated to such State for such fiscal year pursuant to the base allocation formula under title III'', SSA, to ''the total amount of funds to be allocated to all States for such fiscal year pursuant to the base allocation formula under title III.'' Any amounts in excess of the $100,000,000 which, but for the BBA amendments, would have been transferred to the States ''shall, as of the beginning of the succeeding fiscal year, accrue to the Federal unemployment account, without regard'' to its statutory limit.

Reed Act moneys transferred with respect to these fiscal years may be used ''only to pay expenses incurred by [the State] for the administration of its'' UC law. Unlike previous Reed Act transfers, States are prohibited from using the amounts transferred with respect to these three years for the payment of UC or the administration of State public employment offices. However, among other uses, States may, as in the past, use these Reed Act moneys for purchasing real property for UC purposes. These purchases could be amortized against UC grant funds consistent with the UC grant agreement.

Finally, the restrictions applicable to Reed Act transfers in Section 903(c)(2), SSA, are not applicable to the transfers made with respect to fiscal years 1999, 2000 and 2001. This means the amounts transferred to the States may be used without obtaining an appropriation from the State's legislative body.

State UC laws usually contain provisions addressing the use of Reed Act moneys transferred under Section 903, SSA. These laws usually mirror the requirements of Section 903(c)2), SSA, including a requirement that the moneys be used for the payment of UC unless appropriated by the legislative body. States must amend these provisions to prohibit the use of transfers made with respect to fiscal years 1999, 2000, and 2001 for the payment of UC. States may further amend these provisions to authorize use for administrative purposes without a specific appropriation from the State legislature. Nothing prohibits a State legislature from appropriating such money or from attaching conditions to the use of such money, provided the money is used for UC administration.

Draft language for State Reed Act provisions was provided in UIPL 12–91. We recommend that, using that language as a basis, States insert the following language in State law:

(4) Notwithstanding paragraph (1), money credited with respect to Federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the UC program *and are not subject to appropriation by the legislature.* [Emphasis added.]

The underscored language is necessary only if the State chooses to avoid the appropriation process. As an alternative, a State could appropriate the moneys without subjecting them to the various restrictions found in Section 901(c)(3), SSA. (For example, under Section 901(c)(2), SSA, Reed Act moneys may be used only for expenses incurred after the date of enactment of the State appropriation.) In this case, the following language is recommended:

(4) Notwithstanding paragraph (1), money credited with respect to Federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the UC program, and such money shall not otherwise be subject to the requirements of paragraph (1) when appropriated by the legislature.

c. *Reasons for Change.* The House Report describes the reason for increasing the FUA ceiling and providing for the special transfers:

The provision has two main effects: (1) raising the ceiling in the Federal Unemployment Account whole [sic] limiting Reed Act transfers allows for further buildup of funds pending a future recession requiring increased administrative resources; and (2) allowing $100 million in Reed Act transfers will assist States in the administration of their UI programs. (H. Rep. No. 105–149, 104th Cong. 1st Sess. 106 (1997).)

7. *Section 5404, BBA: Interest-Free Advances from the Unemployment Trust Fund.* Under Section 1202(b)(2), SSA, advances made from the FUA during a calendar year are interest free if the following conditions are met:

- The advance is repaid in full before the close of September 30 of the calendar year in which the advances were made, and
- Following this repayment, no other advance was made to the State during the calendar year.

The BBA adds a third condition to Section 1202(b)(2). States must now meet ''funding goals, established under regulations issued by the Secretary of Labor, relating to the

accounts of the States in the Unemployment Trust Fund.'' The amendment applies to calendar years beginning after the date of enactment of the BBA. The Department is commencing work on the required regulations.

According to the House Committee report, this amendment is intended to encourage solvency of State unemployment funds:

Should a State account become insolvent during an economic downturn, adverse conditions can result for the State and its employers. Borrowing Federal funds imposes a cost on the State at a time when it may face other financial difficulties. The State may react by raising taxes on its employers, thereby discouraging economic activity during a period when its economy is already in decline * * *. The provision would encourage States to maintain sufficient unemployment trust fund balances to cover the needs of unemployed workers in the event of a recession. (H. Rep. No. 105–149, 104th Cong. 1st Sess. 108 (1997).)

8. *Sections 5405 and 5407, BBA: Election Workers and Employees of Schools Operated Primarily for Religious Purposes.* Section 3304(a)(6)(A), FUTA, requires, as a condition for employers in a State to receive credit against the Federal unemployment tax, that UC be payable based on services performed for State and local governmental entities, their instrumentalities, and certain nonprofit organizations. The BBA amended FUTA to provide for two new exceptions to this required coverage.

Section 5405 of the BBA added new subparagraph (F) to Section 3309(b)(3), FUTA, to permit States to exclude services performed:

as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than $1,000.

Section 5407 of the BBA added new subparagraph (C) to Section 3309(b)(1) to permit States to exclude services performed for:

(C) an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3), and which is exempt from tax under section 501(a).

States were not previously permitted to exclude services performed for a religiously-oriented school from coverage where the school was not operated, supervised, controlled, or principally supported by a church or convention or association of churches. *See* UIPL 28–87. Since the new exclusion is limited to elementary and secondary schools, services performed by employees of other nonaffiliated religiously-oriented entities are still required to be covered. (For example, day-care centers, post-secondary schools or cemetery associations.) Both exclusions ''apply with respect to service performed after the date of the enactment of'' the BBA. With respect to election workers, this means that, if the individual earned less than $1,000 in calendar year 1997, the services are not required to be covered after August 6, 1997.

States are not required to exclude these services. The Department recommends that States choosing to do so follow the language in Federal law verbatim. However, the language following ''religious purposes'' in subparagraph (C) of Section 3309(b)(1) may be omitted if, as is commonly the case, State law provisions relating to coverage of nonprofit organizations are already limited to those organizations described in Section 501(c)(3), IRC, which are exempt from tax under Section 501(a), IRC.

9. *Section 5406, BBA: Coverage of Services Performed by Inmates.* The BBA added an exclusion to the definition of employment in Section 3306(c), FUTA, for:

(21) service performed by a person committed to a penal institution.

This exclusion applies only for purposes of the FUTA tax. However, as a result of this new exclusion, States may elect to amend their laws to exclude these services without the employers for whom the services are performed losing credit against the FUTA tax.

The effective date of this amendment applies ''with respect to service performed after January 1, 1994.'' Should State law be amended retroactively, amounts previously paid into the State's unemployment fund with respect to these services under the State law in effect at that time may not be refunded to employers. This prohibition is explained in UIPL 11–92.

10. *Section 5608, BBA: State Program Integrity Activities for Unemployment Compensation.* Section 901(c)(1)(A), SSA, authorizes appropriations from the ESAA for assisting States in the administration of their UC laws. (Henceforth, these amounts will be called the ''regular'' grant.) The BBA amended this section to create a special authorization for State program integrity activities. Specifically, a new paragraph was added to Section 901(c):

(5)(A) There are authorized to be appropriated out of the employment security administration account to carry out program integrity activities, in addition to any amounts available under paragraph (1)(A)(i)—

(i) $89,000,000 for fiscal year 1998;
(ii) $91,000,000 for fiscal year 1999;
(iii) $93,000,000 for fiscal year 2000;
(iv) $96,000,000 for fiscal year 2001; and
(v) $98,000,000 for fiscal year 2002.

(B) In any fiscal year in which a State receives funds appropriated pursuant to this paragraph, the State shall expend a proportion of the funds appropriated pursuant to paragraph (1)(A)(i) to carry out program integrity activities that is not less than the proportion of the funds appropriated under such paragraph that was expended by the State to carry out program integrity activities in fiscal year 1997.

(C) For purposes of this paragraph, the term ''program integrity activities'' means initial claims review activities, eligibility review activities, benefit payments control activities, and employer liability auditing activities.

This amendment merely authorizes amounts for appropriation for integrity purposes; Congress must still appropriate the amounts. If and when ''integrity'' moneys are received by the States, their use is limited to the integrity activities described in 901 (c)(5)(C), SSA.

Since Section 901(c)(5)(B), SSA, provides that the State must expend the same proportion of ''regular'' granted funds on integrity activities as was expended in fiscal year 1997, States may not use these integrity moneys to reduce integrity costs to the ''regular'' grant as determined by fiscal year 1997 expenditures.

11. *Section 221, TPRA: Employer-Provided Educational Assistance.* Section 3306(b)(13), FUTA, excludes from the definition of wages ''any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 * * *'' of the IRC. Section 127, IRC, excludes from gross income of the employee certain amounts paid, or expenses incurred, up to $5,250 in a calendar year, by the employer for educational assistance to the employee. Section 127 did not apply to taxable years beginning after May 31, 1997. In the case of tax year 1997, only expenses paid with respect to courses beginning before July 1, 1997, could be taken into account.

The TPRA extends this exclusion. It now applies to expenses paid with respect to courses beginning through May 31, 2000. The amendment applies to taxable years beginning after December 31, 1996. The IRS is responsible for administering this provision.

12. *Section 921, TPRA: Securities Brokers.* For purposes of determining whether an individual is an ''employee,'' Section 3306(i), FUTA, references Section 3121(d), IRC. That section provides that, among other things, an ''employee'' is ''any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee.''

The TPRA provides a clarification concerning the employment tax status of registered representatives of a securities broker-dealer. It provides that ''no weight shall be given to instructions from the service recipient which are imposed only in compliance with investor protection standards imposed by the Federal Government, any State government, or a governing body pursuant to a delegation by a Federal or State agency.'' The IRS is responsible for administering this provision.

The provision is effective for ''services performed after December 31, 1997.''

13. *Section 1024, TPRA: Continuous Levy on Payments of UC.* Federal UC law provides that payments of UC may not be subjected to levy. *See* UIPL 45–89. (A levy is the seizure of a person's property or rights to property to pay a debt.) Although the TPRA did not amend these UC provisions, it authorized the IRS to impose a continuous levy on certain payments, including UC, until the levy is released. This continuous levy may be imposed on any individual who is liable for an internal revenue tax and who does not pay such tax within 10 days of notice and demand by the IRS. Specifically, the TPRA added new subsection (h) to Section 6331, IRC—

(1) In General.—The effect of a levy on specified payments to or received by a taxpayer shall be continuous from the date

such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall attach to up to 15 percent of any specified payment due to the taxpayer.

(2) Specified Payment.—For the purposes of paragraph (1), the term ''specified payment'' means—

(A) any Federal payment other than a payment for which eligibility is based on the income or assets (or both) of a payee,

(B) any payment described in paragraph (4) [pertaining to unemployment benefits], (7) [workers compensation], (9) [wages, salary and other income], or (11) [certain public assistance] of section 6334(a), and

(C) any annuity or pension payment under the Railroad Retirement Act or benefit under the Railroad Unemployment Insurance Act.

Under new Section 6331(h)(2)(C), any payment described in paragraph (4) of Section 6334(a), IRC, may be continuously levied up to 15 percent. Paragraph (4) applies to any ''amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, or any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.'' Under this authority, the IRS may levy any payment under State or Federal UC law, including payments under the UC for Federal employees (UCFE), UC for Ex-servicemembers (UCX) and the Disaster Unemployment Assistance (DUA) programs as well as trade readjustment allowances (TRA) under the Trade Adjustment Assistance and NAFTA-Transitional Adjustment Assistance programs.

The IRS may continuously levy up to 15 percent of ''any specified payment.'' The amendment applies to levies issued after the August 6, 1997, date of the enactment of the TPRA.

The continuous levy is administered by the IRS. The IRS may implement the continuous levy through computer crossmatches with State UC agencies. The UC agencies will be responsible for deducting amounts levied from UC, UCFE, UCX, DUA, and TRA and for forwarding such amounts to the IRS. As the IRS does not pay for costs of levies, the Department is examining the funding implications for the UC system.

Since, in accordance with Federal UC law, all State laws currently prohibit the levy of UC, the Department recommends that States amend their laws to specifically authorize continuous levy in accordance with Section 6331, IRC. Alternatively, States may view Section 6331, IRC, as superseding State law.

14. *Section 1035, TPRA: Extension of Temporary Tax.* Section 3301, FUTA, imposes a tax of 6.2 percent on wages paid in employment by employers. This tax was to have dropped to 6.0 percent beginning in calendar year 1999.

Under the TPRA amendments, the 6.2 percent tax will remain in effect through calendar year 2007. The tax is now scheduled to drop to 6.0 percent beginning with calendar year 2008.

15 *Action.* Appropriate staff should be advised of these amendments.

16. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

[FR Doc. 97–29370 Filed 11–5–97; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

CORRECTION: As published on Oct. 28, 1997 (62 FR 55833) and on Nov. 4, 1997 (62 FR 59749), the agenda for the meeting scheduled for Nov. 15, 1997, is incorrect. The agenda is corrected as follows:

OPEN SESSION:

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of Sept. 20, 1997.
3. Approval of minutes of the Board's executive session meeting of Sept. 20, 1997.
4. Chairman's and Members' Reports.
5. President's Report.
6. Appointment of an ad hoc committee for annual performance evaluations of the President and Inspector General.
7. Consider and act on the report of the Board's Operations and Regulations Committee.
   a. Consideration of public comment and action on final revisions to 45 CFR Part 1630, Costs Standards and Procedures.
   b. Consideration of public comment and action on final rule 45 CFR Part 1643, Restriction on Assisted Suicide, Euthanasia and Mercy killing.
   c. Consider and act on proposed changes to the structure of the Corporation's management.
8. Consider and act on the report of the Board's Finance Committee.
9. Consider and act on the report of the Ad Hoc Committee on Performance Reviews of the President and Inspector General.
   a. Consider and act on procedural matters, including personal performance plans for the President and the Inspector General, written submissions prior to interviews, and interview protocols.
10. Consider and act on report on development of a strategic planning process.
11. Inspector General's Report.
12. Consider and act on proposed Report of the Board of Directors to accompany the Inspector General's Semi-annual Report to the Congress for the period of April 1, 1997–September 30, 1997.

CLOSED SESSION:

13. Briefing[1] by the Inspector General on the activities of the OIG.
14. Consider and act on an internal personnel issue relating to the Corporation's employee pension plan.
15. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

OPEN SESSION:

16. Consider and act on whether to change the date of the next annual meeting and, if so, to what date.
17. Public comment.
18. Consider and act on other business.

Dated: November 4, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–29488 Filed 11–4–97; 12:41 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 2, 1997, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on October 31, 1997 to the following applicants:

Brenda Hall & George Denton—Permit No. 98–014

Frederick W. Taylor, Sr.—Permit No. 98–015

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 97–29383 Filed 11–5–97; 8:45 am]

BILLING CODE 7555–01–M

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). *See* also 45 CFR § 1622.2 & 1622.3.

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name and Committee Code: Special Emphasis Panel in Materials Research #1203.
Date & Time: November 25, 1997; 9:00 am–5:00 pm.
Place: NSF Conference Room 1060, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Carmen Huber, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1996.
Purpose of Meeting: To provide advice and recommendations concerning support for the 1998 Research Experience for Undergraduates (REU) Site competition in the area of materials research.
Agenda: To review and evaluate proposals submitted to NSF as a part of the selection process for awards.
Reason for Closing: The activity being evaluated may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29320 Filed 11–5–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Social and Political Science; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, and amended), the National Science Foundation announces the following meetings:

Name: Advisory Panel for Social and Political Science (#1761).
Date and Time: November 20–21, 1997; 9:00 a.m. to 5:00 p.m.
Place: Department of Political Science, University of California, Los Angeles, CA 90095–1472.
Contact Person: Dr. Frank Scioli and Dr. Rick Wilson, Program Directors for Political Science, National Science Foundation. Telephone: (703) 306–1761.
Agenda: To review and evaluate the political science proposals as part of the selection process for awards.

Date & Time: December 8–9, 1997; 9:00 a.m. to 5:00 p.m.
Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 970, Arlington, VA 22230.
Contact Person: Dr. Harmon Hosch, Program Director, Law and Social Science, National Science Foundation. Telephone (703) 306–1762.
Agenda: To review and evaluate the Law and Social Science Proposals as a part of the selection process for awards.

Date & Time: December 11–12, 1997 9:00 a.m. to 5:00 p.m.
Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 380, Arlington, VA 22230
Contact Person: Dr. William S. Bainbridge, National Science Foundation, Telephone (703) 306–1756
Agenda: To review and evaluate the Sociology proposals as a part of the selection process for awards.
Type of Meetings: Closed
Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29321 Filed 11–5–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–416]

Exemption

In the matter of Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, Entergy Mississippi, Inc.; (Grand Gulf Nuclear Station, Unit 1)

I

Entergy Operations, Inc. (the licensee) is the holder of Facility Operating License No. NPF–29, which authorizes operation of Grand Gulf Nuclear Station, Unit 1 (GGNS). The operating license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now and hereafter in effect.

The facility is a General Electric boiling water reactor at the licensee's site in Claiborne County, Mississippi.

II

Title 10 CFR 70.24, ''Criticality Accident Requirements,'' paragraph (a) states, in part, that ''Each licensee authorized to possess special nuclear material [SNM] in a quantity exceeding 700 grams of contained uranium-235, 520 grams of contained uranium-233, 450 grams of plutonium, 1,500 grams of contained uranium-235 if no uranium enriched to more than 4 percent by weight of uranium-235 is present, 450 grams of any combination thereof, or one-half such quantities if massive moderators or reflectors made of graphite, heavy water or beryllium may be present, shall maintain in each area in which such licensed special nuclear material is handled, used, or stored, a monitoring system meeting the requirements of [10 CFR 70.24](a)(1) or (a)(2), as appropriate, and using gamma- or neutron-sensitive radiation detectors which will energize clearly audible alarm signals if accidental criticality occurs. This section is not intended to require underwater monitoring when special nuclear material is handled or stored beneath water shielding or to require monitoring systems when special nuclear material is being transported when packaged in accordance with the requirements of Part 71 [(i.e., 10 CFR Part 71, ''Packaging and Transportation of Radioactive Material,'')] of this chapter.''

The licensee meets the quantity criteria in 10 CFR 70.24(a) and is, therefore, required to have a criticality accident monitoring system in each area in which SNM in any form is handled, used, or stored. The licensee has proposed an exemption to this requirement for the storage of two forms of SNM at the site: (1) not-in-use in-core nuclear instrumentation (e.g., source range monitors) and (2) onsite unirradiated fuel. For the unirradiated fuel, the exemption is requested for the following cases:

- The interval when the fuel, packaged for shipment to the site in accordance with 10 CFR Part 71, is taken from the shipping truck to the plant area where the Part 71 packaging is removed.
- The storage of the unirradiated fuel in the new fuel vault (NFV), instead of the spent fuel pool, after the packaging is removed.

The very small quantity of SNM present in the nuclear instrumentation is in the form of thin coatings within the instrumentation and the unirradiated fuel assemblies would only be removed from the NRC-approved packaging in areas where criticality monitors are in use, and stored in either the NFV or the

spent fuel pool. The unirradiated fuel that is stored in the spent fuel pool would be monitored in accordance with 10 CFR 70.24(a), whereas there is not a criticality accident monitor in the NFV.

An exemption from 10 CFR 70.24(a) is required for the licensee to store SNM at the site and not have a criticality accident monitoring system for the storage areas.

III

Pursuant to 10 CFR 70.14, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 70.24(d), any licensee who believes that good cause exists why it should be granted an exemption in whole or in part from the requirements of this section may apply to the Commission for such an exemption. Such application shall specify the reason for the relief requested.

By letter dated July 15, 1996, as supplemented by letters dated March 7 and April 29, 1997, the licensee requested an exemption from the monitoring requirements of 10 CFR 70.24(a) for the storage of these two forms of SNM at the site. In those letters, the licensee provided the justification and reasons for requesting the exemption. The licensee did not request an exemption to the performance requirements of a criticality accident monitoring system that are specified in 10 CFR 70.24(a)(1) or (a)(2).

A previous exemption from the provisions of 10 CFR 70.24 for the storage of SNM was granted for GGNS in the July 15, 1981, SNM License No. 1882. This exemption expired with the SNM license when the operating license was issued for GGNS because the exemption was not reissued at that time. Therefore, the licensee has requested an exemption from the criticality accident monitoring requirements of 10 CFR 70.24(a) specifically for the areas containing in-core instrumentation detectors (which are not in use) and unirradiated (fresh) fuel. For unirradiated fuel, the exemption is requested for the unirradiated fuel that is in NRC-approved packaging while the fuel is taken from the shipping trucks to the spent fuel pool area to be removed from the packaging, and for the unirradiated fuel that is stored in the NFV, instead of the spent fuel pool.

The principal form of SNM at GGNS is in the form of nuclear fuel. Other quantities of SNM are also used or stored at the facility in the form of fissile material incorporated into in-core nuclear instrumentation (e.g., source range monitors, intermediate range monitors, local power range monitors, and traversing in-core probes). The instrumentation is being stored at the site within the security fence in different plant areas.

The SNM in the nuclear instrumentation is in small quantities in thin coatings applied to the inside of sealed fission chambers contained within the instruments. The licensee has stated that the total amount of SNM contained in the nuclear instruments meets the ''forms not sufficient to form a critical mass'' in Section 1.1 of Regulatory Guide 10.3, ''Guide for the Preparation of Applications for Special Nuclear Material Licenses of Less Than Critical Mass Quantities,'' Revision 1, dated April 1977. Thus, the licensee has committed that the total amount of SNM contained within in-core nuclear instrumentation will be less than a critical mass. Therefore, the small quantity of SNM in the nuclear instrumentation precludes inadvertent criticality.

Unirradiated nuclear fuel is received at the site only in NRC-approved Part 71 packaging. The entire Part 71 packaging consists of two right rectangular boxes consisting of an outer wooden container surrounding a inner metal container housing the unirradiated fuel. There is only cushioning material between the two boxes. The containers are designed in accordance with a certificate of compliance for radioactive materials packages issued by the NRC, in this case for the shipment of unirradiated fuel assemblies. It is the inner metal container that ensures that a geometrically safe configuration of the fuel is maintained during transport, handling, storage, and accident conditions, and that the introduction of any moderating agents to the fuel is precluded due to its leak-tight construction. Criticality is precluded due to the construction of the package and the storage configuration of the fuel in the package. This is based on a criticality analysis of the Part 71 packaging which limits the number of such packages on a shipping truck.

The handling of unirradiated fuel at the site is governed by administrative and departmental procedures that specify New Fuel Processing and Criticality Rules to ensure that fuel is not inadvertently removed from the inner metal container until it is positioned in the fuel inspection area near the spent fuel pool of the auxiliary building where a criticality accident monitoring system meeting 70.24(a) is present. It is the metal container that is referred to when the licensee stated that the unirradiated fuel will only be removed from the NRC-approved packaging in the presence of a criticality accident monitoring system meeting 70.24(a).

The unirradiated fuel is brought onsite on shipping trucks. The wooden containers are removed from the inner metal containers, and the unirradiated fuel is lifted in the metal container to the 208-foot level of the auxiliary building, and adjacent to the cask washdown pit and NFV of the spent fuel pool area. Only one metal container is lifted at a time, and the crane and lifting equipment used for the lift are certified. The plant areas that the metal containers would be moved through were inspected during a visit to the site and it was determined that the areas have drains to prevent the possibility of submerging the metal containers under water and creating a possible criticality condition. The only practical plant area where the new fuel could be submerged in water to introduce moderation is the spent fuel pool and there are 70.24(a) monitors in that area.

In the spent fuel pool area, the fuel is removed from the containers, inspected and channeled, and then placed either in the spent fuel pool or the NFV. Currently the unirradiated fuel is placed only in the spent fuel pool and, while the fuel is in the spent fuel pool, it is monitored by a 70.24(a) monitoring system; however unirradiated fuel may be stored inside the NFV and there is not a criticality accident monitor in the NFV. The design basis criticality margin requirements for the NFV is to maintain the unirradiated fuel in the vault at a subcriticality margin of at least 0.05 (i.e., a k effective no more than 0.95). The new fuel would be stored in racks that are designed to withstand all credible static and dynamic loadings to prevent damage and distortion of the racks, and to maintain the design subcriticality margin of 0.05 whether the vault is dry or flooded with unborated water, because unborated water would moderate the fuel and reduce the subcriticality margin. The racks are constructed in accordance with the quality assurance requirements of Appendix B to 10 CFR Part 50 and are categorized as Safety Class 2 and Seismic Category I. The vault is in a concrete, Seismic Category I building that is designed to Regulatory Guides 1.13 and 1.29 which precludes the deleterious effects on the fuel in the NFV by natural phenomena such as

earthquakes, tornados, hurricanes, tornado missiles, and floods. To prevent water moderation, there is a drain at the low point of the vault to remove water in the vault to prevent accumulation of water within the NFV and no fuel is placed in the vault if there is water in the vault. The licensee also has procedures to prevent the introduction of an optimum moderation inside the vault (e.g., using pressurized water fire extinguishers instead of foam for combating fires around fuel) which could decrease the subcriticality margin to a value greater than the design value of 0.05. Although the Technical Specifications for Grand Gulf do not specifically limit the enrichment of the fuel onsite including the NFV, the k-effective for spent fuel or new fuel in the fuel racks and submerged in water is limited to 0.95 by the Technical Specifications and the enrichment of the fuel onsite is limited because the k-effective for the NFV is not allowed to be greater than 0.95. The fuel enrichment is a contributor to the value of k-effective. Therefore, the design of the NFV will preclude inadvertent criticality of the new fuel in the vault.

Therefore, based on the licensee's letters and the staff's evaluation, the Commission concludes that good cause exists for granting an exemption to the criticality monitoring requirements of 10 CFR 70.24(a) in storage areas for (1) in-core instrumentation detectors which are not in use and (2) unirradiated fuel stored in the NFV. Based on the information provided by the licensee, there is reasonable assurance that the nuclear instrumentation and unirradiated fuel will remain subcritical during handling and storage in areas where critically accident monitors required by 10 CFR 70.24(a) are not present. Additionally, all fuel storage and handling areas will continue to be monitored to detect conditions that may result in excessive radiation levels as required by General Design Criterion 63.

IV

For the foregoing reasons, pursuant to 10 CFR 70.24(d), the NRC staff has determined that good cause has been shown for granting an exemption to the criticality monitoring requirements of 10 CFR 70.24(a).

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.14, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, with the total amount of SNM contained in the in-core nuclear instruments less than a critical mass, as defined by Section 1.1 of Regulatory Guide 10.3 (Revision 1, dated April 1977), with the unirradiated fuel assemblies only removed from the NRC-approved metal containers in areas where criticality monitors are present, and with administrative controls to prevent optimum moderation of the unirradiated fuel in the NFV, the Commission hereby grants Entergy Operations, Inc. an exemption from the criticality monitoring requirements of 10 CFR 70.24(a) for the storage of not-in-use in-core nuclear instrumentation and of unirradiated fuel in the NFV.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (62 FR 55837). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of October 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–29343 Filed 11–5–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration

On October 22, 1997, the **Federal Register** published a Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration. On page 54881, under Baltimore Gas and Electric Company, information from another notice was electronically merged with this notice causing an inaccurate publication. A copy of the notice, in its entirety, as it should have appeared follows:

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland.

Date of application for amendments: March 28, 1996, as supplemented November 20, 1996, and July 31, 1997.

Brief description of amendments: The amendments reduce the moderator temperature coefficient limit shown on Technical Specification Figure 3.1.1–1. This proposed change is necessary to support changes in the safety analyses made to accommodate a larger number of plugged steam generator tubes for future operating cycles.

Date of issuance: October 2, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 222 and 198.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 8, 1996 (61 FR 20843).

The November 20, 1996, and July 31, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 2, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 31st day of October 1997.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects III/V, Office of Nuclear Reactor Regulation.

[FR Doc. 97–29345 Filed 11–5–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Applications for Sealed Sealed Source and Device Evaluation and Registration, Availability of Draft NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of and requesting comment on draft NUREG–1556, Vol. 3, ''Consolidated Guidance about Materials Licenses: Applications for Sealed Sealed Source and Device Evaluation and Registration,'' dated September 1997.

NRC is consolidating and updating numerous guidance documents into a series of program specific guidance documents to be published in a NUREG format. All NUREGs in the series will carry the number and title: NUREG 1556, Volume X, ''Consolidated Guidance About Materials Licenses.'' Each specific guidance document will have an identifying volume number, and the title of the specific guidance will appear as the sub-title of the NUREG. This draft NUREG is the third guidance document to be published in

this series; therefore it is listed as Volume 3.

The guidance NUREG is intended for use by applicants, licensees, registration certificate holders, NRC license reviewers, and other NRC personnel. It combines and updates the guidance for applicants and licensees previously found in draft Regulatory Guides 10.10, ''Guide for the Preparation of Applications for Radiation Safety Evaluation and Registration of Devices Containing Byproduct Material,'' and Regulatory Guide 10.11, ''Guide for the Preparation of Applications for Radiation Safety Evaluation and Registration of Sealed Sources Containing Byproduct Material,'' and guidance for persons reviewing such applications found in NUREG–1550, ''Standard Review Plan for Applications for Sealed Source and Device Evaluations and Registrations.'' In addition, this draft report also contains information found in pertinent Policy and Guidance Directives, Technical Assistance Requests, and Information Notices.

This draft NUREG report has been distributed for comment to encourage public participation in its development. It represents the current position of the NRC staff, which is subject to change after the review of public comments. Comments received will be considered in developing the final NUREG report that represents the official NRC staff position. Once the final NUREG report is published, NRC staff will use it in its review of applications for registrations.

DATES: The comment period ends December 17, 1997. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to DLM1@NRC.GOV.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 3, by writing to the U.S. Nuclear Regulatory Commission, ATTN: John W. Lubinski, Mail Stop TWFN 8–F5, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to JWL@NRC.GOV. A copy of draft NUREG–1556, Volume 3, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: John W. Lubinski, Mail Stop TWFN 8-F5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7868; electronic mail address: JWL@NRC.GOV.

Electronic Access

Draft NUREG–1556, Vol. 3 is also available electronically by visiting NRC's Home Page (http://www.nrc.gov/NRC/NUREGS/SR1556/V3/index.html).

Dated at Rockville, Maryland, this 30th day of October, 1997.

For the Nuclear Regulatory Commission.

Frederick C. Combs,

Acting Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–29344 Filed 11–5–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Field trip: December 3–4, 1997—Amargosa Valley, Nevada, Ground-Water Discharge, Yucca Mountain Area Geology, Volcanism, and Tour of Yucca Mountain

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board (Board) will conduct two field trips, December 3 and 4, 1997, beginning at 8:30 a.m. both days. The field trips, which are open to the public, will focus on ground-water discharge, geology, and volcanism in the vicinity of Yucca Mountain on December 3 and the Yucca Mountain site on December 4.

During the morning of December 3, participants on the first field trip will stop at and hear presentations on Franklin Lake Playa (alkali flats where water beneath Yucca Mountain is likely to discharge), Ash Meadows (an oasis formed by discharging groundwater), and Devil's Hole (a site where much climate data has been gathered). Participants will return to the Longstreet Inn for lunch. In the afternoon, participants will stop and hear presentations at Steves Pass (with a view of Crater Flat and other geologic surroundings of Yucca Mountain), the Lathrop Wells volcanic cone (a possible site of evidence for predicting the likelihood of future volcanic activity), Lathrop Wells diatomite (a past discharge area near Yucca Mountain), an Amargosa Valley farming area (the likely basis for defining the future Yucca Mountain biosphere), Travetine Point (another past discharge area), and, time permitting, Death Valley.

Participants on the second field trip (December 4) will visit the Yucca Mountain site. Visits and presentations will include the crest of Yucca Mountain and the view of surrounding volcanic cones, geologic features, and the exploratory studies facility portals. Other stops will include well pad UZ 7a, which offers a view of the Ghost Dance Fault, and the large block test facility. Following a break for lunch, the field trip will split. One portion will go undergound to tour the exploratory studies facility, including the thermal response test alcove. Due to health and safety requirements at the site, the number participating in this portion of the tour will be extremely limited. The other portion will visit the C-well complex, the sample-management facility, or other sites at Yucca Mountain.

The Board will provide bus transportation for both field trips, which will begin and end at the Longstreet Inn & Casino, HCR 70, Box 559, Amargosa Valley, Nevada 89020; telephone (702) 372–1777; fax (702) 372–1280. Rooms are available. You must mention that you are attending the Nuclear Waste Technical Review Board's field trip to receive the preferred rate.

You may register for either field trip by telephoning Davonya Barnes or Frank Randall at (703) 235–4473. You will be required to provide your full name, social security number, date of birth, place of birth, current address, and telephone number. To prevent potential reservation errors, FAX and EMAIL requests will not be honored. As seating is limited, spaces will be filled on a first-come/first-served basis. If there are more requests than space available, a waiting list will be maintained in case there are cancellations.

Itineraries for both field trips will be available on or about November 19 at the Board's website, www.nwtrb.gov or by fax or first class mail upon request. For further information, contact Frank Randall, External Affairs, 2300 Clarendon Blvd., Suite 1300, Arlington, Virginia 22201–3367; (Tel) 703–235–4473; (Fax) 703–235–4495; (E-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities

undertaken by the DOE in its program to manage the disposal of the nation's high-level radioactive waste and commercial spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Dated: October 31, 1997.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 97–29331 Filed 11–5–97; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22868; 812–10726]

First American Investment Funds, Inc., et al.; Notice of Application

October 30, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Order requested to allow certain series of three registered open-end investment companies to acquire all of the assets and liabilities of the series of another registered open-end investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: First American Investment Funds, Inc. (''FAIF''), First American Funds, Inc. (''FAF''), First American Strategy Funds, Inc. (''FASF''), First Bank National Association (the ''Adviser''), First Trust National Association (''First Trust''), The Qualivest Funds (the ''Trust''), Qualivest Capital Management, Inc. (''Qualivest''), and United States National Bank of Oregon (''U.S. Bank'').

FILING DATES: The application was filed on July 18, 1997. Applicants have agreed to file an amendment, the substance of which is included in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 20, 1997 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: FAIF, FAF, and FASF, Oaks, PA 19546; First Bank National Association, First Bank Place, 601 Second Avenue South, Minneapolis, MN 55480; First Trust National Association, 180 East Fifth Street, St. Paul, MN 55101; The Qualivest Funds, 3435 Stelzer Road, Columbus, OH 43219–3035; Qualivest, P.O. Box 2758, Portland, OR 97208; and U.S. Bank, 111 S.W. Fifth Avenue, Suite T–2, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Senior Counsel, at (202) 942–0553, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is an open-end management investment company registered under the Act. The Trust currently consists or thirteen series (the ''Acquired Funds''), Qualivest is a subsidiary of U.S. Bank, and is the investment adviser to the Acquired Funds. U.S. Bank is a wholly-owned subsidiary of U.S. Bancorp. U.S. Bank and certain of its affiliates hold of record more than 5% of the outstanding shares of certain Acquired Funds. In addition, defined benefits plans for which Qualivest, U.S. Bank, or their affiliates have funding obligations own more than 5% of the outstanding shares of certain Acquired Funds.

2. FAIF, FAF, and FASF are open-end investment companies registered under the Act and each offers shares in certain series (some of which constitute the ''Acquiring Funds''). FAIF [1], a Maryland corporation, offers shares in 20 series, four of which are Acquiring Funds.[2] FAF [3], a Minnesota corporation, currently consists of three series, two of which are Acquiring Funds.[4] FASF, a Minnesota corporation, offers shares in four series, each of which is an Acquiring Fund.

3. The Adviser is registered under the Investment Advisers Act of 1940 and is the investment adviser for each of the Acquiring Funds. The Adviser and First Trust are wholly-owned subsidiaries of First Bank System, Inc. (''FBS''). First Trust and certain of its affiliates hold of record more than 5% of the outstanding shares of certain Acquiring Funds. In addition, defined benefit plans for which FBS, the Adviser, First Trust, or their affiliates have funding obligations own more than 5% of the outstanding shares of certain Acquiring Funds.

4. FBS and U.S. Bancorp entered into an Agreement and Plan of Merger on March 19, 1997, which provided that U.S. Bancorp would merge with and into FBS, with FBS continuing as the surviving corporation (the ''Merger''). The Merger was consummated on or about September 2, 1997. At that time, the Adviser and First Trust became affiliated with Qualivest and U.S. Bank, and all of those entities became part of a common control group.

5. On June 4, 1997, the boards of directors of FAIF, FAF, and FASF (the ''First American Boards''), including their disinterested directors, unanimously approved the reorganization (the ''Reorganization''), and on June 17, 1997, the Board of Trustees of the Trust (the ''Trustees'') unanimously approved the Reorganization, including a draft Agreement and Plan of Reorganization (the ''Reorganization Agreement''). Pursuant to the Reorganization Agreement, each Acquiring Fund proposes to acquire all of the assets and assume all of the liabilities of its corresponding Acquired Fund in exchange for shares of the Acquiring Fund based on the Funds' relative net asset values. The number of Acquiring Fund shares to be issued in exchange for each Acquired Fund share of each class will be determined by dividing the net asset values of one Acquiring Fund share of the appropriate corresponding class by the net asset value of one Acquired Fund share of such class, computed as of the close of trading on

[1] FAIF was incorporated in 1987 as ''SECURAL Mutual Funds, Inc.'' an changed its name to ''First American Investment Funds, Inc.'' in 1991.

[2] In addition, 2 new shell series are being created in FAIF and will constitute Acquiring Funds.

[3] FAF was incorporated under the name ''First American Money Fund, Inc.'' and changed its name to ''First American Funds, Inc.'' in 1990.

[4] A new series, the ''Tax Free Obligations Fund,'' is being created in FAF and will be an Acquiring Fund.

the New York Stock Exchange on the date that the conditions to closing are satisfied or on a later date as the parties may agree (the ''Effective Time'').

6. The Acquiring Funds generally offer shares in three classes (Classes A, B, and C). Only Class A and Class C shares will be issued in the Reorganization. Class A shares generally are sold with a front-end sales charge. Purchases of $1 million or more of Class A shares that are sold within 24 months after purchase are subject to a contingent deferred sales charge. Class A shares are not subject to any other contingent deferred sales charge, other sale charge, or any redemption fee. Class A shares are subject to shareholder servicing fees under a rule 12b–1 plan. Class C shares are not subject to a front-end, contingent deferred, or other sales charge, a redemption fee, or rule 12b–1 distribution or shareholder servicing fees.

7. The Acquired Funds offer shares in four classes (Classes A, C, Y, and Q). Class A shares generally are subject to a front-end sales charge, and under certain circumstances, a contingent deferred sales charge is imposed. Class A shares are subject to distribution fees under a rule 12b–1 plan. Class C shares of certain of the Acquired Funds may be subject to a contingent deferred sales charge, or distribution and shareholder services fees under a rule 12b–1 plan. Class Y shares are not subject to a contingent deferred sales charge or any other sales charge. These shares are offered only through trust departments of banks and other institutional investors for monies that are held in a fiduciary, agency, custodial, or similar capacity. Class Q shares are offered with no sales charge and no contingent deferred sales charge. Class Q shares generally are subject to rule 12b–1 fees. As a result of the Reorganization, holders of Class A shares and Class C shares of the Acquired Funds will become holders of Class A shares of the Acquiring Funds, and holders of Class Q shares and Class Y shares of the Acquired Funds will become holders of Class C shares of the Acquiring Funds, and will be subject to the sales charges, and the rule 12b–1 distribution and shareholder servicing fees applicable to the class of Acquiring Fund shares issued to them (as well as fund level expenses, such as investment advisory fees, of the relevant Acquiring Fund). In applying the deferred sales charge applicable to purchases of Class A shares with respect to which the front-end sales charge was waived, and applicable purchases of Class C shares, credit will be given for the period an Acquired Fund shareholder who is subject to the deferred sales charge held his or her shares of the Acquired Fund.

8. Each Fund pays the Adviser an investment advisory fee annually, which the Adviser currently is waiving to the extent that total fund expenses exceed the average daily net assets of the respective Acquiring Funds. In addition, certain classes of each Fund pay annual distribution fees based on a percentage of the Fund's average daily net assets.

9. The investment objectives of each Acquired Fund and its corresponding Acquiring Fund are similar. The investment restrictions and limitations of each Acquired Fund and corresponding Acquiring Fund are substantially similar, but in some cases involve differences that reflect the differences in the general investment strategies utilized by the Funds.

10. On or before the Effective Time, the Acquired Fund will have declared a dividend and/or other distribution so that it will have distributed all of its investment company taxable income, exempt-interest income, and realized net capital gain, if any, for the taxable year ending on or prior to the Effective Time.

11. The Reorganization Agreement provides that, at the Effective Time of the Reorganization, each Acquiring Fund will issue and distribute to its corresponding Acquired Fund's shareholders of record, determined as of the Effective Time, the Acquiring Fund shares issued in exchange for the Acquired Fund shares. Afterwards, no additional shares representing interests in the Acquired Fund will be issued, and the Acquired Fund will be liquidated. The distribution will be accomplished by the issuance of the Acquiring Fund shares to open accounts on the share records of the Acquiring Fund in the names of the Acquired Fund shareholders representing the number of Acquiring Fund shares due each shareholder pursuant to the Reorganization Agreement. Simultaneously, all issued and outstanding shares of the Acquired Fund will be canceled on the books of the Acquired Fund. No sales charge will be incurred by Acquired Fund shareholders in connection with their acquisition of Acquiring Fund shares pursuant to the Reorganization Agreement.

12. In considering the Reorganization, the First American Boards, including the disinterested directors, and the Trustees, including the disinterested trustees, found that participation in the Reorganization is in the best interests of each Acquired Fund and Acquiring Fund, and that the interests of existing shareholders of the Funds will not be diluted as a result of the Reorganization.

13. The First American Boards and the Trustees considered a number of factors in making their findings, including: (a) the terms and conditions of the Reorganization; (b) the tax-free nature of the Reorganization; (c) the costs of the Reorganization to the Funds; (d) the compatibility of the objectives, policies, and restrictions of the Funds; (e) the investment advisory fees, rule 12b–1 fees, and the sales charges that would become applicable to former shareholders of the Acquired Funds; and (f) the potential benefits to the Adviser. The First American Boards and the Trustees noted also that the larger size of the Acquiring Funds enables the Acquired Funds to achieve certain economies of scale, and potentially may increase operating efficiencies and facilitate portfolio management.

14. The Adviser will be responsible for the expenses incurred in connection with the Reorganization and any unamortized organizational expenses of the Acquired Funds existing at the Effective Time.

15. The Reorganization Agreement may be terminated by the mutual consent of the relevant First American Boards and the Trustees at any time prior to the Effective Time.

16. On August 8, 1997, applicants filed with the SEC a registration statement on Form N–14 containing a combined prospectus/proxy statement. Applicants sent the prospectus/proxy statement to shareholders of each Acquired Fund on or about September 15, 1997.

17. The consummation of the Reorganization is subject to the following conditions set forth in the Reorganization Agreement: (a) the shareholders of the Acquired Fund will have approved the Reorganization Agreement; (b) applicants will have received exemptive relief from the SEC with respect to the issues that are the subject of the application; (c) an opinion of counsel with respect to the federal income tax aspects of the Reorganization will have been received by applicants; and (d) the Adviser, or an affiliate of the Adviser, will have paid any unamortized organizational expenses on the books of the relevant Acquired Fund, and those expenses will not be reflected in the net asset value calculations made in connection with the Reorganization. Applicants agree not to make any material changes to the Reorganization Agreement that affect the application without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling any security to, or purchasing any security from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person that owns 5% or more of the outstanding voting securities of the other person, and any person directly or indirectly controlling, controlled by, or under common control with the other person; or, if the other person is an investment company, any investment adviser of the investment company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

3. Applicants believe that they may not rely upon rule 17a–8 because the Funds may be affiliated for reasons other than those set forth in the rule. First Trust and its affiliates hold of record more than 5% of the outstanding shares of certain Acquiring Funds and hold or share voting power and/or investment discretion with respect to a portion of those shares.[5] In addition, U.S. Bank and its affiliates hold of record more than 5% of the outstanding shares of certain Acquired Funds and hold or share voting power and/or investment discretion with respect to a portion of those shares.[6] Because of these ownership interests, the Acquiring Fund may be deemed an affiliated person of an affiliated person of the Acquired Fund, and vice versa, for reasons not based solely on their common adviser. Consequently, applicants are requesting an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization.

4. Section 17(b) of the act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned; and the proposed transaction is consistent with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b), in that the terms are fair and reasonable and do not involve overreaching on the part of any person concerned. Applicants note that the First American Boards and the Trustees, including the disinterested directors and trustees, found that participation in the Reorganization is in the best interests of each Fund and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants also note that the exchange of the Acquired Funds' shares for the Acquiring Funds' shares will be based on the Funds' relative net asset values.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–29354 Filed 11–5–97; 8:45 am]

BILLING CODE 8010–01–M

[5] Applicants state that the Acquiring Funds in which First Trust does not hold of record more than 5% of the outstanding shares also are unable to rely on rule 17a–8 because they are affiliated with the Acquired Funds for reasons other than those set forth in the rule. Applicants state that these Funds are affiliated with the Acquired Funds because they are affiliated with the Adviser under section 2(a)(3)(E) and, after the Merger (in which U.S. Bank and the Adviser will be merged), the Adviser will be an affiliate of the Acquired Funds under section 2(a)(3)(A) by virtue of U.S. Bank's ownership of more than 5% of the outstanding shares of certain of the Acquired Funds.

[6] Applicants state that the one Acquired Fund (the U.S. Treasury Money Market Fund) that U.S. Bank does not hold of record 5% or more of the outstanding shares also is unable to rely on rule 17a–8 because it is affiliated with the Acquiring Fund for reasons other than those set forth in rule 17a–8. Applicants state that the Acquired Fund is affiliated with the Adviser under section 2(a)(3)(E) and, after the Merger, the Adviser will be an affiliate of the Acquiring Funds under section 2(a)(3)(C).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 9, 1997, (62 FR 17276–17277).

DATES: Comments must be submitted on or before December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Representatives of the Administrator, FAR 183.

OMB control number: 2120–0033.

Type of request: Extension of currently approved collection.

Affected Public: Individuals seeking to represent the Administrator in examining, testing, and certifying airmen for the purpose of issuing them airmen certificates.

Abstract: Title 49, U.S.C., Section 44702, authorizes appointment of properly qualified private persons to be representatives of the Administrator for examining, testing, and certifying airmen for the purpose of issuing them airmen certificates. The information collected is used to determine eligibility of the representatives. This submission will no longer cover the application for airmen medical examiners since that reporting burden now has its own OMB control number of 2120–0604.

Annual Estimated Burden Hours: 3,114.

Number of Respondents: 7,152.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on October 31, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–29318 Filed 11–5–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Minority Business Resource Center Advisory Committee

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held Wednesday, December 10, 1997, from 9:30–11:30 a.m. at the Department of Transportation, 400 7th Street, SW., Conference Room 8236–8240, Washington, DC 20590. The agenda for the meeting is as follows:

—Advocacy

—DOT DBE Program (SNPRM)

—Affirmative Action Issues

—Outreach

—Financial Services

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Office of Small and Disadvantaged Business Utilization, Minority Business Resource Center by 4:00 p.m. on Monday, December 8, 1997. Information pertaining to the meeting may be obtained from Mrs. Marie A. Hendricks, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–1930 or (800) 532–1169. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on October 31, 1997.

Luz A. Hopewell,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 97–29317 Filed 11–5–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Technical Standard Orders: Aircraft Bearings

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO) pertaining to aircraft bearings. The proposed TSO prescribes the regulatory performance standards that manufacturer-specified parts and appliances must meet to be identified with the marking ''TSO–C149.''

DATES: Comments must identify the TSO file number and be received on or before January 5, 1998.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C149, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT:

Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, FAX No. (202) 267–5340.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

The FAA established the Aviation Rulemaking Advisory Committee (ARAC) in January 1991 to provide an ongoing mechanism to accept recommendations from the aviation industry in the regulatory process (56 FR 2190; January 22, 1991; and 58 FR 9230; February 19, 1993). In March 1993, the FAA established the Parts Working Group as part of ARAC (58 FR 16572; March 29, 1993). The Parts Working Group was tasked with recommending to ARAC new regulations and guidance material, as appropriate, pertaining to the issuance and administration of approvals of replacement and modification parts for civil aircraft. The proposed TSO in this notice is based on a draft proposed TSO developed by the Parts Working Group and recommended to the FAA by the ARAC.

The standards or proposed TSO–C149 apply to aircraft bearings intended for anti-friction rotation and/or oscillatory applications in the manufacture and maintenance of aircraft products. Proposed TSO–C149 provides alternative requirements for making each individual bearing. Each bearing must be marked with at least the name or symbol of the manufacturer, the manufacturer's part number, and the TSO number. When this is not practical, marking may be accomplished in a manner approved by the Administrator. Also, in addition to the marking specified in 14 CFR 607(d), the seal type, the lubrication date (if applicable), and the manufacturer's inspection lot number shall be marked on each package and container.

How to Obtain Copies

A copy of the proposed TSO–C149 may be obtained via Internet (http:/www.faa.gov/avr/air/100home.htm) or on request from the office listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 27, 1997.

Abbas A. Rizvi,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–29351 Filed 11–5–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Technical Standard Orders: Aircraft Seals

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO) pertaining to aircraft seals. The proposed TSO prescribes the regulatory performance standards that manufacturer-specified parts and appliances must meet to be identified with the marking ''TSO–C150.''

DATES: Comments must identify the TSO file number and be received on or before January 5, 1998.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C150, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, FAX No. (202) 267–5340.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

The FAA established the Aviation Rulemaking Advisory Committee (ARAC) in January 1991 to provide an ongoing mechanism to accept recommendations from the aviation industry in the regulatory process (56 FR 2190; January 22, 1991; and 58 FR 9230; February 19, 1993). In March 1993, the FAA established the Parts Working Group as part of ARAC (58 FR 16572; March 29, 1993). The Parts Working Group was tasked with recommending to ARAC new regulations and guidance material, as appropriate, pertaining to the issuance and administration of approvals of replacement and modification parts for civil aircraft. The proposed TSO in this notice is based on a draft proposed TSO developed by the Parts Working Group and recommended to the FAA by the ARAC.

The standards of proposed TSO–C150 apply to aircraft seals intended for static and dynamic applications in the manufacture and maintenance of aircraft products. Proposed TSO–C150 provides alternative requirements for marking each individual seal. Each seal must be marked with at least the name or symbol of the manufacturer, the manufacturer's part number, and the TSO number. When this is not practical, marking may be accomplished in a manner approved by the Administrator. Also, in addition to the marking specified in 14 CFR 607(d), the seal type, the manufacturer's inspection lot number, and the expected shelf life shall be marked on each package and container.

How To Obtain Copies

A copy of the proposed TSO–C150 may be obtained via Internet (http:/www.faa.gov/avr/air/100home.htm) or on request from the office listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 29, 1997.

Brain A. Yanez,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–29352 Filed 11–5–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Notice of Request for Reinstatement, Without Change, of a Previously Approved Collection for Which Approval Is Scheduled To Expire

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Saint Lawrence Seaway Development Corporation's (SLSDC's) intention to request the reinstatement, without change, of a previously approved collection for which approval is scheduled to expire.

DATES: Comments on this notice must be received by January 5, 1998.

ADDRESSES: Send comments to Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Suite 5424, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Scott A. Poyer, Chief Economist, Saint Lawrence Seaway Development Corporation, Office of Great Lakes Pilotage, United States Department of Transportation, 400 7th Street SW., Suite 5424, Washington, DC 20590, (800) 785–2779, or Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Suite 5424, Washington, D.C. 20590, (800) 785–2779.

SUPPLEMENTARY INFORMATION:

Title: Great Lakes Pilotage Rate Methodology.

OMB Control Number: 2135–0501.

Expiration Date: February 28, 1998.

Type of Request: Reinstatement without change, of a previously approved collection for which approval is scheduled to expire.

Abstract: The Great Lakes Pilotage Act of 1960 authorizes the Director of Great Lakes Pilotage to prescribe a uniform system of accounts and to perform audits and inspections of Great Lakes pilot associations. The Director uses this information to carry out financial oversight of the Great Lakes pilot associations and to set pilotage rates. The specific information to be filed by respondents is set forth in 33 CFR Parts 404–407.

Respondents: Great Lakes Pilot Associations.

Estimated Number of Respondents: 3.

Average Annual Burden Per Respondent: 6 hours.

Estimated Total Burden on Respondents: 18 hours.

This information collection is available for inspection at the Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Suite 5424, Washington, D.C. 20590. Copies of 33 CFR Parts 404–407 can be obtained from Mr. Scott Poyer at the address and telephone number shown above.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the SLSDC, including whether the information will have practical utility; (b) the accuracy of the SLSDC's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued at Washington, D.C. on November 3, 1997.

Saint Lawrence Seaway Development Corporation.

David G. Sanders,

Acting Administrator.

[FR Doc. 97–29384 Filed 11–5–97; 8:45 am]

BILLING CODE 4910–61–U

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

October 23, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0794.

Form Number: IRS Form 8554.

Type of Review: Revision.

Title: Application for Renewal of Enrollment to Practice Before the Internal Revenue Service.

Description: This information related to the approval of continuing professional education programs and the renewal of the enrollment status for those individuals admitted (enrolled) by the Internal Revenue Service.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 39,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 12 minutes.

Frequency of Response: Other (One-time filing).

Estimated Total Reporting/ Recordkeeping Burden: 47,400 hours.

OMB Number: 1545–1096.

Form Number: Form 9117.

Type of Review: Revision.

Title: Excise Tax Program Order Blank for Forms and Publications.

Description: Form 9117 allows taxpayers who must file Form 720 returns a systemic way to order additional tax forms and informational publications.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 15,000.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 500 hours.

OMB Number: 1545–1271.

Regulation Project Number: REG–208165 (formerly INTL–54–91) and REG–209035–86 (formerly INTL–178–86) NPRM.

Type of Review: Extension.

Title: Transfers of Stock or Securities by U.S. Persons to Foreign Corporations, and Foreign Liquidations and Reorganizations.

Description: A U.S. person must generally file a gain recognition agreement with the Service in order to defer gain on a section 367(a) transfer of stock to a foreign corporation, and must file a notice with the Service if it realizes any income in a section 367(b) exchange. These requirements ensure compliance with the respective sections.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,400 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–29313 Filed 11–5–97; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Summer Institute for the Study of the United States for Foreign Secondary School Teachers and Teacher Trainers

ACTION: Notice—Request for Proposals.

SUMMARY: The Branch for the Study of the U.S. of the Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program entitled ''Summer Institute for the Study of the United States for Foreign Secondary School Teachers and Teacher Trainers.'' Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a six-week graduate-level program designed for a multinational group of up to 30 secondary school teachers and teacher trainers. The program is intended to provide participants with a deeper understanding of the United States so that textbooks, curricula and teaching about U.S. society, culture and institutions in foreign secondary schools and teacher training institutions will be improved. Tentative program dates are June 20 through July 31, 1998.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in the disciplines and sub-disciplines that comprise American Studies, and that can demonstrate expertise in conducting graduate-level programs for foreign educators. *Applicant institutions must have a minimum of four years' experience in conducting international exchange programs.* The project director or one of the key program staff responsible for the academic program must have a doctoral degree in American studies or a related discipline. Staff escorts traveling under the USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and projects must conform with Agency requirements and

guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Name and Number: All communications with USIA concerning this announcement should refer to the above title and reference number E/AAS–98–10.

Deadline For Proposals: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington D.C. time on Friday, January 16, 1998. Faxed documents will not be accepted, nor will documents postmarked January 16, 1998 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

FOR FURTHER INFORMATION CONTACT: U.S. Information Agency, Office of Academic Programs, Branch of the Study of the United States (E/AAS), 301 4th Street, S.W., Room 256, Washington, D.C. 20547, Attn: Program Officer Susan Zapotoczny, Telephone number (202) 619–4557, Fax number (202) 619–6790, Email address: szapotoc@usia.gov.

Please use the above information to request a Solicitation Package, which contains more detailed award criteria; required application forms; and standard guidelines for preparing proposals (including specific information on budget preparation).

Please specify USIA Program Officer Susan Zapotoczny on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

To Download a Solicitation Package Via Internet: The Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To receive a solicitation Package Via Fax On Demand: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering system.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/AAS–98–10, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' section of the proposal on a 3.5 inch diskette formatted for DOS. This material must be provided in ascii text (DOS) format with a maximum line length of 65 characters.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. *Diversity* should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The Summer Institute for the Study of the U.S. for Foreign Secondary School Teachers and Teacher Trainers aims to provide a deeper understanding of U.S. civilization among foreign educators who are concerned professionally with teaching about the United States. It is further intended to encourage and support their efforts to improve the quality of teaching, textbooks, and curricular materials about the United States at secondary schools and teacher training institutions abroad.

The program should offer participants a specially-designed series of lecutures, presentations, discussions, site visits, and curricular research opportunities. All activities should be related to a central theme in U.S. civilization, and the program as a whole should examine various aspects of U.S. society, culture, values and institutions, past and present, providing a good overview for participants.

The program should be six weeks in length, including a residency segment at a U.S. college or university campus (a minimum of four weeks in length), and a study tour segment (a maximum of two weeks in length) to up to three additional regions of the U.S., including a visit to Washington, D.C. at the conclusion of the program.

Institute Objectives

—to present an intensive, academically stimulating program that presents a multi-dimensional view of the United States through an integrated series of lectures, readings, interactive discussions, individual research and study opportunities, and site visits.

—to draw from a variety of academic disciplines in order to deepen the participants' understanding of the unity, diversity, and complexity of U.S. society, culture, and institutions. Major issues, debates, and conflicts in U.S. society, past and present, including their origins and the role they have played in the development of U.S. civilization, should also be examined.

—to enhance teaching about the U.S. in foreign secondary schools and teacher training institutions by making appropriate scholarly resources, pedagogical materials and ideas available to participants. Participants should return home with an ability to communicate a deeper and more informed view of the U.S. to students and colleagues.

Program Dates

Tentative program dates are June 20 through July 31, 1998. Participants would arrive on June 19 and depart August 1. USIA will make every effort to award the grant by March 1, 1998.

Participants

The program should be designed for a total of 30 highly-motivated foreign secondary school teacher trainers, textbook writers, curriculum developers, education ministry officials and classroom teachers, whose professional assignments require significant knowledge of U.S. civilization, and who have broad responsibility for curriculum design and improvement. Participants will be involved in the teaching of English language, American literature, U.S. government, history, geography, social studies, or other courses that include U.S. studies content. Participants will be drawn from all regions of the world, and will be fluent in the English language.

Participants will be nominated by Fulbright Commissions abroad, and

selected by the staff of USIA's Branch of the Study of the United States in Washington, D.C. USIA and the Commissions will cover all international travel costs directly.

Guidelines

The conception, design, structure, and, ultimately, the content of the institute program is entirely the responsibility of the organizers. However, given the many possible approaches to a program on U.S. civilization, organizers are expected to submit proposals that articulate in concrete detail how they intend to organize and implement the institute.

Consistent with the institute's overall thematic organization, the program should engage the constituent disciplines that make up American studies (e.g., literature, history, political science, economics, geography, sociology, etc.) as vehicles for helping foreign educators understand, teach, and write about the United States.

The selected grant organizations will be responsible for most arrangements associated with this program. This includes the organization and implementation of all presentations and program activities, arrangement of all domestic travel, provision of appropriate lodging, subsistence, and ground transportation for participants, orientation and briefing of participants, preparation of any necessary support materials (including a pre-program mailing to participants), and working with program presenters to achieve maximum program coordination and effectiveness.

Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Proposed Budget

Unless special circumstances warrant, based on a group of 30 participants, the total USIA-funded budget (program and administrative) should not exceed $236,000, and USIA-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $56,000. Justification for any costs above these amounts must be clearly indicated in the proposal submission. Any grants awarded to eligible organizations will less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicant proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive line item budget for the entire program, based on the specific guidance provided in the Solicitation Package. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. Government funding.

Please refer to the ''POGI'' in the Solicitation Package for complete budget guidelines and formatting instructions for the institute program.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the program office, as well as the USIA Georgraphic Area Offices. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

1. *Overall Quality:* Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program should reflect an overall design whose various elements are coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. *Program Planning:* Proposals should demonstrate careful and detailed planning. The organization and structure of the Institute should be clearly delineated and be fully responsive to all program objectives. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment.

3. Institutional Capacity: Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conducive to a collegial atmosphere.

4. Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience: The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. Evaluation and Follow-up: The proposal should include a plan for evaluating activities during the Institute and at its conclusion. Proposals should detail the provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Administration and Management: The proposals should indicate evidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. Cost Effectiveness: The proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

Notice

The terms and conditions published in this RFP are binding and may not be modified by an USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funding. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal USIA procedures.

Dated: October 31, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–29373 Filed 11–5–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0396]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on certification of training under the Service Members Occupational Conversion and Training Act.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 5, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0396'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–8310 or FAX (202) 273–5981.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Certification of Training (Under the Service Members Occupational Conversion and Training Act), VA Form 22–8929.

OMB Control Number: 2900–0396.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Public Law 102–484 established the Service Members Occupational Conversion and Training Act (SMOCTA). Section 4467 requires monthly or quarterly certification of training under SMOCTA. An employer uses VA Form 22–8929 to advise VA of: (1) the number of hours a veteran has worked in an approved program during each month; (2) the amount and date of payment the employer has made to the veteran for the purchase of any tools and work-related equipment; and (3) the training status of the veteran (e.g., currently training, satisfactorily completed training, quit, laid off, etc.). Continued use of VA Form 22–8829 is necessary to authorize reimbursement to an employer.

Affected Public: Business or other for-profit, Individuals or households, State, Local or Tribal Government, and Not-for-profit institutions.

Estimated Annual Burden: 500 hours.

Estimated Average Burden Per Respondent: 30 minutes per application.

Estimated Annual Recordkeeping Burden: 85 hours.

Estimated Average Burden Per Recordkeeper: 1 hour.

Frequency of Response: Monthly or Quarterly.

Estimated Number of Respondents: 1,000.

Estimated Number of Recordkeepers: 85.

Dated: October 27, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–29310 Filed 11–5–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 62, No. 215

Thursday, November 6, 1997

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.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 213a and 299

[INS No. 1807–96]

RIN 1115–AE58

Affidavits of Support on Behalf of Immigrants

Correction

In rule document 97–27605, beginning on page 54346, in the issue of Monday, October 20, 1997, make the following corrections:

1. On page 54348, in the third column, in the third line, ''obliagion'' should read ''obligation''.

§ 213a.2 [Corrected]

2. On page 54353, in § 213a.2, in the third column, the paragraph designation ''(C)(1)'' should read ''(C)(*1*)''.

3. On page 54354, in § 213a.2, in the first column, the paragraph designation ''(2)'' should read ''(*2*)''.

4. On the same page, in the second column, in § 213a.2, in the third full paragraph, ''B.'' should read ''(B)''.

5. On page 54356, in the first column, in the signature line, ''*Immigrant*'', should read ''*Immigration*''.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1427-93]

RIN 1115-AC51

Nonimmigrant Classes; Treaty Aliens; E Classification

Correction

In rule document 97–22314, beginning on page 48138, in the issue of Friday, September 12, 1997, make the following correction:

§ 214.2 [Corrected]

On page 48146, in the second column, in § 214.2(e)(4), in the last line, ''101(a)(15)(e)'' should read ''101(a)(15)(E)''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 94-055]

RIN 2115-AF23

Licensing and Manning for Officers of Towing Vessels

Correction

In proposed rule document 97–28409 beginning on page 55548 in the issue of Monday, October 27, 1997 make the following corrections:

(1) On page 55548, in the third column:

(a) Under the heading **SUMMARY**, in the next to the last line ''the'' should read ''and''.

(b) Under the same heading, in the last line ''requirement'' should read ''requirements''.

(c) Under the heading **ADDRESSES**, in the second paragraph, in the fourth line ''the'' should read ''this''.

(2) On page 55549, in the first column:

(a) Under the heading **Request for Comments**, in the third paragraph, in the ninth line ''late'' should read ''later''.

(b) In the next to the last line ''improvement'' should read ''improvements''.

(3) On the same page, in the second column, in the fourth full paragraph, in the third line ''matters'' should read ''mariners''.

(4) On page 55552, in the first column, under the heading *12.Title Terminology*, eight lines from the bottom ''mater'' should read ''mate''.

(5) On the same page, in the third column, in the fourth line ''two'' should read ''tow''.

(6) On page 55556, in the first column, in the fourth line ''2.B2.e (34)'' should read ''2.B.2.e.(34)(c)''.

BILLING CODE 1505-01-D

Federal Register

Thursday
November 6, 1997

Part II

Department of Housing and Urban Development

24 CFR Parts 203 and 206

Single Family Mortgage Insurance—Loss Mitigation Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203 and 206

[Docket No. FR–4032–F–04]

RIN 2502–AG72

Single Family Mortgage Insurance—Loss Mitigation Procedures

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements as final an interim rule that amends 24 CFR part 203 to eliminate the Mortgage Assignment Program and to provide that HUD may: Recompense mortgagees for using mortgage foreclosure alternatives, such as special forbearance, loan modifications, and deeds in lieu of foreclosure; pay the mortgagee a partial claim which would be applied to the arrearage of a defaulted mortgage; and accept assignment of a mortgage which the mortgagee has modified to cure the default.

EFFECTIVE DATE: February 1, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Servicing Division, Room 9178, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1672, or, TTY for hearing and speech impaired, (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

This rule's information collection requirements have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An OMB control number, when assigned, will be published in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Background

On July 3, 1996 (61 FR 35014) the Department published an interim rule to implement loss mitigation procedures under section 407 of The Balanced Budget Downpayment Act, I (Pub. L. 104–99, approved January 26, 1996) (Downpayment Act). Public comments on the interim rule were invited for a period of 60 days, until September 3, 1996. Delayed implementation dates of March 1, 1997, were included for provisions in two sections of the interim rule (24 CFR 203.355(a) and 203.402(f)) so that the Department would be able to consider any public comments on these provisions before making them effective in a final rule. The March 1, 1997 implementation date for these sections was suspended until the issuance of a final rule by an amendment published on March 5, 1997 (62 FR 9930). On November 12, 1996, HUD issued Mortgagee Letter 96–61. This letter provides information regarding changes to special forbearance, mortgage modification, pre-foreclosure sales procedures and deeds-in-lieu of foreclosure, and introduces the use of partial claims, measurement of lender performance and provisions for incentive payments and reimbursements. Included as attachments to the mortgagee letter are a checklist of eligibility criteria for each of the loss mitigation procedures and instructions required to file a claim. HUD also issued Mortgagee Letter 97–17, May 1, 1997, regarding loss mitigation clarification of procedures, and Mortgagee Letter 97–21, May 16, 1997, regarding Performance Scores.

III. Changes in the Final Rule

A number of changes from the interim rule are made in this final rule. They are described briefly below in this section, and more fully in section IV. of this preamble, in the discussion of the public comments received on the interim rule.

—The final rule has added a new § 203.341 to explicitly state that mortgage insurance remains in force after payment of a partial claim.

—The titles of §§ 203.342 and 203.616 are changed from ''Recasting of mortgage'' to ''Mortgage modifications.''

—HUD has amended the final rule at § 203.355(a) to clarify that the loss mitigation provisions may be used in combination.

—HUD has rewritten § 203.355(g), (h) and (i) to provide 90 days for the lender to try another loss mitigation tool or to proceed to foreclosure after the failure of any loss mitigation tool.

—The effective dates of the foreclosure timing and cost reimbursement provisions in §§ 203.355 and 203.402, respectively, are changed to February 1, 1998.

—To be consistent with the other paragraphs under § 203.371(b), the reference to ''The mortgage'' in paragraph (b)(1) is changed to read ''the mortgagor''. The reference in paragraph (b)(5) to ''financially able'' is clarified to ''financially qualified'' to reflect more accurately instances in which a mortgagor may have the funds but not the equity to support a modification.

—The words ''accumulated during the forbearance period'' are deleted from § 203.414(a) to more accurately reflect the authorizing statute and avoid a potential technical limit on the amount recoverable under a partial claim.

—Section 203.552 is also clarified to provide that mortgagees may collect fees from mortgagors to the extent not reimbursed by HUD.

IV. Response to Public Comments

Thirteen comments were received in response to the July 3, 1996 interim rule. Four of the comments were from mortgagees; four were from public interest groups; two were from State housing finance agencies; two were from individuals; and one was from an industry association. HUD has reviewed the comments received in response to the interim rule and decided that some changes should be made in the final rule. The following discussion addresses the changes or additions to the rule and the administrative issuances, in response to the public comments received on the Loss Mitigation (''LM'') interim rule. The discussion is organized by the section of the interim rule that is being commented on, with specific subject headings under each rule section, as warranted.

Section 203.342 Recasting of Mortgage

One comment observed the rule does not define, here and in § 203.471, ''circumstances beyond the control.''

Response: Please note the response to this comment in the discussion under § 203.471, below.

Section 203.350 Assignment of Mortgage

Assignment Program Grace Period. Two comments stated a grace period needs to be implemented between the termination of the Assignment Program on April 26, 1996, and the implementation of alternative procedures.

Response: The statute established April 26, 1996 as the ending date for the Assignment Program and provided for processing of applications submitted before that date. HUD continues to process all assignment applications received prior to April 26, 1996.

Assignment of modified mortgage. One comment stated HUD should positively commit to accepting assignment of a mortgage upon fulfillment of the requirements of § 203.350.

Response: The statement that HUD ''may'' accept an assignment in paragraph (a) of this section repeats the statutory language, which establishes the circumstances under which HUD is permitted to accept the assignment of a mortgage. Since HUD has worked with GNMA to change the repooling requirements (*see* Mortgagee Letter 96–32, June 28, 1996) HUD foresees no occasion when a mortgage will not be able to be repooled or when assignment to HUD will be necessary. Nevertheless, the authority to accept assignments in rare and unforeseen circumstances remains available.

Section 203.355 Acquisition of Property

Lender's Final Determination and Needs of Mortgagors. One comment stated that the over-arching flaw of these alternatives is that their use is left entirely to the discretion of lenders. Another comment argued that lenders who hold HUD-insured mortgages have no significant incentives to work with homeowners to avoid foreclosure, and they do not do so. This comment went on to say the regulations fall short in designing a reasonable response to the needs of low-income homeowners for foreclosure prevention and relief.

Response: Under the Loss Mitigation program the lender will have the final determination on the use of LM measures and will have incentives to try to use them where appropriate. Unlike the Assignment Program, none of these LM measures is an entitlement, and thus the lender has more discretion with regard to administering these measures. Lenders must use their judgement in deciding which LM measure is appropriate for a particular mortgagor. The language that the interim rule adds to § 203.501 and Mortgagee Letter 96–61 provides a process through which a borrower's eligibility for loss mitigation is determined. The statute provides that the lender will be given the discretion to decide which LM measures will be used in a particular case.

FHA programs are meant to be self-sustaining, and an essential element of these loss mitigation measures is that they must decrease the insurance funds' prospective losses (or at least not increase the funds' prospective losses). Thus, HUD must balance the needs of mortgagors with the need to mitigate losses to the mortgage insurance funds. These measures are designed for mortgagors who prospectively can recover from their financial difficulties. If the mortgagor has not recovered financially within 18 months, HUD analysis and experience indicate that the prospects for recovery are poor. Two reasons for a cap on the term of forbearance are to limit the level of losses to the insurance fund and to prevent borrowers from getting too deeply into arrears.

Training Lenders and Housing Counseling Agencies in LM Program. One comment noted that without better training programs, manuals, and instructions, coupled with meaningful FHA oversight, the benefits of these alternatives will not be realized by either HUD or homeowners. Another comment strongly recommended that, with HUD implementing these changes, more training be provided to Housing Counselors across the country.

Response: HUD will promote mortgagee participation in LM, and provide training to lenders and monitor their performance. HUD has already provided Loss Mitigation training to some lenders and housing counseling agencies and will provide additional training in the near future.

Shorter Foreclosure Initiation Period. Three comments supported the reduction of the foreclosure initiation period from nine to six months as realistic and consistent with conventional loan servicing procedures. One of these comments was pleased that the implementation of the reduced period was delayed in the interim rule. Three other comments opposed reducing the time frame of foreclosure to six months as too short to allow mortgagors to work out plans with mortgagees and resolve circumstances.

One comment argued the requirement in § 203.355(h) to initiate foreclosure within 90 days of a borrower's failure to meet the terms of a special forbearance agreement is not a sufficient time period, given that mortgagees may not proceed with foreclosure until a borrower's failure has continued for 60 days. Sixty days from the 60-day failure, a total of 120 days, would be more workable. Another comment on this section recommended § 203.355(h) should clarify that foreclosure must be initiated within the time period of paragraph (a)—nine or six months from the date of default—or within 90 (or 120) after the borrower's failure to meet the special forbearance requirements, whichever is later.

Response: HUD considers the six-month period for initiating foreclosure to be adequate. The industry standard is four months. If HUD continues to use a nine-month period, the Department will incur additional expense. Also, the longer foreclosure is delayed, the less likely it is that a mortgage will be cured. The final rule is being amended by adding a new paragraph (i) at § 203.355 to clarify that if a lender enters into a loss mitigation relief measure and it fails, the six-month requirement is extended by an additional ninety days to allow the lender to try another loss mitigation tool or go to foreclosure. It is also to be expected that if after six months no loss mitigation measure is workable, then foreclosure is inevitable.

HUD believes that the ''window'' for initiating foreclosure provides the lender with adequate time in special forbearance cases. The lender determines when LM fails or no other LM tool is applicable. In each instance, the lender must initiate foreclosure within 90 days. There is no need to expand this 90-day deadline in the rule, since the lender is able, in any case where additional time would facilitate mitigating loss, to request an extension from HUD.

Simultaneously Considering LM and Pursuing Foreclosure. The preamble to the interim rule states that HUD will ''generally'' permit mortgagees simultaneously to consider loss mitigation actions and to proceed with foreclosure to meet the new six-month time period. One comment requested HUD to clarify its use of the term ''generally,'' because mortgagees need to understand the specific circumstances under which HUD would find it appropriate and acceptable to stop or delay foreclosure for mortgagors who are actively negotiating or paying under a loss mitigation plan.

Response: The final rule at § 203.355 has clarified that lenders may use loss mitigation tools and take foreclosure action in combination. The prospect of foreclosure is an effective incentive to borrowers in negotiating workouts and the rule is intended to allow flexibility in this interrelationship. As stated in the preamble to the interim rule (at 61 FR 35015, column 2 and 3), HUD believes that early intervention—before six months of delinquent payments—is necessary for effective LM, and the lender may make timely preparations for initiation of foreclosure while pursuing LM actions. In addition, on a case-by-case basis, the lender may request an extension to the 6-month deadline from the field office.

HUD has rewritten § 203.355(g) and (h) to provide 90 days to try another loss mitigation tool or to proceed to foreclosure after the failure of any loss mitigation tool.

Using LM tools in combination. One comment requested that the regulation be explicit in informing lenders and homeowners that the loss mitigation tools may be used singly or in combination. Although the preamble explains that the servicing actions or strategies may be used in combination, § 203.355(a) implies just the opposite by

saying that ''the mortgagee shall take one of the following actions within [nine or] six months of the date of default . . .''

Response: The LM provisions may be used in combination and HUD has amended the final rule at § 203.355(a) accordingly. This is discussed on page 2 of Mortgagee Letter 96–61, where HUD says that the LM strategies ''may be used singly or in combination, as required on a case-by-case basis.'' In accordance with the explicit legislative intent, HUD will defer to the discretion of the lender in applying loss mitigation measures.

Section 203.371 Partial claim

Partial Claim and Special Forbearance. One comment asked if the forbearance agreement at § 203.371(a) must meet the requirements of a ''special'' forbearance agreement.

Response: The forbearance discussed in § 203.371(a) need not be ''special forbearance'' under § 203.471 to qualify for a partial claim.

Special Forbearance Period of 18 Months. One comment argued the planned 18 month limit on special forbearance is an arbitrary period of time and is too short. HUD has put all authority to provide assistance in the hands of the mortgagee. Only if the mortgagee decides to provide special forbearance (which HUD intends to limit to 18 months), and the homeowner is then able to make full mortgage payments, will HUD provide a partial claim to the mortgagee at the end of the special forbearance period.

Response: HUD has determined that an 18-month period for special forbearance is sufficient to allow the mortgagor to recover financially. In addition, this limit is reasonable in view of the statutory limit (amended § 230(a) of the National Housing Act, 12 U.S.C. 1715u(a)) that partial claims may not exceed 12 monthly mortgage payments (PITI) and any costs related to default that are approved by HUD.

Partial Claim Filing. A comment asked if the mortgagee may choose when to file a partial claim under § 203.371(b)(1) after the mandated default period has passed.

Response: Mortgagee Letter 96–61, in the claims instructions for partial claims, specifies the window of time for filing the claim, namely, between the time the subordinate lien to HUD has been executed and 60 days after it has been recorded.

Repooling Modified Loans. One comment stated the rule does not indicate whether GNMA or non-GNMA investors have approved or considered the requirement that to file a partial claim, the mortgagor must not be able to support monthly mortgage payments for a modified loan in which the total arrearage is included. If investors prohibit loan modification under circumstances in which the rule requires such activity, servicers could be caught in the middle. HUD should establish underwriting criteria for eligibility of mortgagors for the proposed loan modification program. Another comment asked if HUD will provide definitive guidelines for making determinations of a borrower's financial capacity under § 203.371(b) (4) and (5) to refinance or support a modified mortgage.

Response: HUD has worked out an understanding with GNMA for revised pooling requirements to assure repooling and minimize this problem. HUD expects that in almost all cases, mortgage modifications can be effected in such a way as to be repoolable, that is, at an interest rate and with a new term (*e.g.*, 360 months) that will meet GNMA pooling requirements. Nevertheless, in the limited circumstances where a modified mortgage cannot be repooled, HUD will establish criteria for accepting a modified mortgage for assignment, and provide guidance in a future Mortgagee Letter.

Servicing the HUD-held Second Mortgage. Three comments recommended the rule should state that a mortgagee is entitled to a fee for servicing when HUD accepts assignment and requires a mortgagee to continue servicing the loan under § 203.371(d). One of these comments argued that given the low balances, a percentage based servicing fee would not be sufficient. Another comment stated the vast majority of mortgagees are not experienced in servicing ''soft seconds,'' the subordinate lien arising from payment of a partial claim, and most computer systems are not programmed to handle such unique debt instruments. This comment recommended that HUD solicit a limited number of servicers to service the subordinate liens on behalf of HUD. On a related issue, one comment recommended that the guidelines should make clear that the subordinate mortgage may call for repayment of the partial claim amount at a future date or at the time of transfer of property or payoff of the insured mortgage. HUD should also specify that subordinate mortgages will be at zero percent interest.

Response: HUD intends to continue to reserve the right to require lenders to service second mortgages executed in connection with partial claims. However, as noted in Mortgagee Letter 96–61, since the subordinate mortgage carries no interest or monthly payments and is due only when the first mortgage is paid in full, foreclosed, or when the borrower no longer occupies the property, HUD has decided to hold and service these mortgages at this time.

Mortgagee Advances—Reimbursement in the settlement of the Partial Claim. One comment asked if a partial claim payment will include mortgagee advances on behalf of the borrower.

Response: Mortgagees will be reimbursed, in accordance with Mortgagee Letter 96–61 instructions for Item 107 in the claims instructions for a Partial Claim. Item 107 provides for reimbursement of the total arrearage that accumulated during the forbearance period, including PITI and necessary advances for assessments, but excluding late fees and foreclosure costs.

Loan Insurance After a Partial Claim. One comment stated the rule should clarify that if a default occurs after payment of a partial claim, the full amount of remaining principal, advances and accrued debenture interest with applicable costs is payable in a subsequent foreclosure and conveyance claim.

Response: After a partial claim, the remaining loan remains insured. The final rule has added a new § 203.341 to explicitly state that mortgage insurance remains in force after payment of a partial claim, as is already done in existing LM actions such as special forbearance and loan modification.

Using the Partial Claim Procedure to Erase Excess of Debt Over Current Market Value. One comment suggested HUD might consider using the partial claim process to pay out insurance coverage on any gap between the loan balance and the market value. This would pay down the debt to a market value, make the lender whole, and allow the mortgage payments to be reduced to a lower amount on the net balance of the remaining rate and term.

Response: FHA mortgages, even when LM is to be considered, are not meant to be ''shared-depreciation mortgages.'' While the Pre-Foreclosure Sale procedure accomplishes something similar to this (although the mortgagor necessarily loses the property), the negative equity position is not an appropriate reason for using the Partial Claims procedure. The mortgagor remains liable for the full amount of the debt even if there is negative equity, just as the mortgagor would benefit if the property were to appreciate in value.

Section 203.402 Items Included in Payment

Tying Reimbursement to LM Success Rates. A number of comments stated they were opposed to the change that would permit HUD to vary the percentage of foreclosure and acquisition expenses through an administrative issuance rather than through the rulemaking process. Setting the reimbursement levels for these costs is important enough to be addressed through a notice and comment rulemaking process rather than administrative issuance. One comment suggested that the rule should specify a level of reimbursement (*e.g.*, up to 100 percent and not less than 50 percent) for foreclosure costs or costs of acquiring the property, rather than state that the percentage reimbursed will be determined by HUD. Another comment argued HUD should not tie the reimbursement of foreclosure fees and costs to loss mitigation performance, because loss mitigation success is influenced by a number of factors, such as the age of the portfolio, geography, and whether the loan was acquired, that are independent of mortgagee efforts. The level of reimbursement should take into consideration the percentage of loss mitigation cures versus the percentage of foreclosures, reinstatements, servicing acquisitions and peer performance. HUD should work with the mortgage industry to develop a fair and equitable performance model. Another comment also questioned the ability to develop a fair and equitable calculation methodology that would accurately measure mortgagee performance without incorporating factors over which mortgagees have little or no control. The comment concluded that even the best of loss mitigators cannot overcome origination and underwriting deficiencies.

Response: In the interim rule, HUD specifically requested public comment and provided for a delayed implementation date to allow for consideration of comments received for both the foreclosure timing and cost reimbursement provisions in §§ 203.355 and 203.402, respectively. With the March 5, 1997 publication of the suspension of these provisions, they will not take effect until a minimum of sixty days after publication of this final rule in the **Federal Register**. The rule satisfies the concerns expressed in relation to reimbursement reductions, since the lowered rate of reimbursement for foreclosure costs at § 203.402(f), will apply only to mortgages endorsed on or after February 1, 1998. Lenders have had an opportunity to comment on this point, and these provisions are not going into effect without the opportunity for prior notice and comment. The other changes to § 203.402 do not constitute reductions.

HUD has undertaken an effort to streamline its rules, and that policy is being followed in this rule. Minimizing the detail put into the rule will give HUD the flexibility to make appropriate amendments in a timely manner in response to the experience of lenders and HUD with LM procedures, and to vary the reimbursement for LM measures according to lender performance. HUD will address the reimbursement of foreclosure costs in future mortgagee letters.

HUD's ranking model was announced in Mortgagee Letter 97–21, May 16, 1997. In developing this model, HUD considered these comments, met with industry representatives, and adopted some of the comments. As a result, HUD believes the model provides a fair basis for ranking lenders.

HUD contends that LM has a significant impact upon losses to FHA insurance funds based on foreclosure avoidance. HUD has and will continue to work with industry to provide equitable performance measurements. HUD is creating an incentive for lenders to intervene early in the default cycle to address delinquencies.

Tying the foreclosure cost reimbursement to lender performance is part of the LM incentive structure. Not only do lenders receive cash incentives for performing LM, but lenders must accept some risk, in the form of absorbing foreclosure costs, for their LM decisions or failure to use LM tools. Mortgagee Letter 97–21, on page 2, provides that lenders in the top 25% of each of the performance groups (high, medium and low volume) will receive 75% reimbursement of foreclosure costs.

HUD believes that LM is a win-win-win proposition for borrowers, lenders and HUD. Borrowers get an opportunity to retain home ownership; lenders can better manage their inventory losses through early default intervention; and HUD can better protect the insurance funds to continue providing affordable housing opportunities.

How Reimbursement for LM Will be Made. One comment stated the rule needs to clarify if HUD will reimburse for loss mitigation efforts in the event a mortgage insurance claim is filed or whether a separate transaction driven claim process is envisioned.

Response: Mortgagee Letter 96–61 and the claims instructions attachments explain how the reimbursement is accomplished. Generally, lenders may submit a claim for each LM tool when it is put in place. Should the loan go to foreclosure despite the lender's LM efforts, the lender may file a claim for the insurance benefits.

Mortgagee Monitoring by HUD. One comment recommended that in reimbursing mortgagees for foreclosure and acquisition costs, and in the payment of partial claims, HUD should closely monitor mortgagees to make sure they are making good faith efforts to bring accounts current before initiating foreclosure on mortgagors.

Response: HUD realizes that mortgagees will need to be monitored on their implementation of LM, and HUD has allocated staff and modified automated procedures to accomplish this. HUD is monitoring lenders' performance and will take necessary enforcement actions to assure compliance with servicing requirements.

Section 203.412 Payment for Foreclosure Alternative Actions

Lender Incentives. One comment stated payment of insurance benefits for loss mitigation activities, if adequate, will provide a near-term benefit that could balance the cost of employing loss mitigation techniques. If HUD wishes to avoid the costs associated with default and foreclosures, it must be willing to pay a reasonable amount to the lender and the borrower.

Response: HUD believes that lenders will have sufficient incentive to employ LM measures. While the reimbursements and incentives provided by HUD may not by themselves be decisive, lenders and servicers are in business to make money holding and servicing loans that perform. To the extent that LM actions result in mortgagors' retention of their homes, mortgagees retain their business. In addition, when a lender conveys a property to HUD, the lender, under the final rule, has to absorb one third or more of the foreclosure costs and forego substantial interest revenue. Thus, if the lender refuses to consider loss mitigation, the lender will certainly lose. Mortgage insurance continues after the LM is undertaken, whether successfully or not. The authorizing statute is explicit in directing HUD to give the mortgagees latitude to exercise their discretion in deciding upon using Loss Mitigation measures. The rule requires mortgagees to review each case monthly and determine which LM tool to utilize.

Fees (including attorney fees) Incurred in LM Actions. One comment suggested that in addition to reimbursement for any title examination

and/or title insurance policy endorsement, mortgagees should be reimbursed for their legal costs incurred in connection with a mortgage modification or recasting.

Response: The claims instructions issued in Mortgagee Letter 96–61 provide for payments to partially offset ''administrative fees'' (Item 129 on the claim) for special forbearance, loan modification, deed in lieu and partial claim to offset the lender's costs and thereby provide an incentive to undertake LM measures. The Department considers these fees adequate. In addition, HUD provides a payment for consideration to mortgagors in pre-foreclosure sale and deed-in-lieu cases.

Section 203.414 Amount of Payment—Partial Claims

Arrearage. Two comments recommended the rule should clarify that arrearage includes principal, interest, late charges, taxes, and other fees (inspection fees, attorney's fees, bankruptcy and foreclosure fees, insufficient check fees, late charges) necessary to bring the loan current.

Response: Mortgagee Letter 96–61 clarified ''mortgage payment'' to consist of PITI. The arrearage includes only PITI; no other costs are eligible for reimbursement under a partial claim, although the lender will also receive a flat administrative fee and will be reimbursed recordation costs.

Section 203.471 Special Forbearance

Circumstances Beyond the Mortgagor's Control. One comment observed HUD has not defined, here and in § 203.342, ''circumstances beyond the control.'' This leaves servicers open to being second-guessed.

Response: HUD does not intend to second-guess lenders who reasonably provide for the use of LM tools. HUD defined ''circumstances'' in an objective manner in Mortgagee Letter 96–61 to address a broad audience of homeowners. The Letter indicates that ''Homeowners may be considered for special forbearance provided they have recently experienced (1) an involuntary reduction in income or an increase in living expenses and (2) the lender determines the borrower has a reasonable ability to pay under the terms of the forbearance plan to eliminate the arrearage.''

Non-hardship Forbearance. One comment claimed the concept of penalizing the lender by not reimbursing those forbearance delinquencies which are not caused by hardship will stifle the incentive of the lenders to forbear.

Response: HUD's loss mitigation program does not have a ''hardship'' test. As noted immediately above, FHA has broadened the basis for when special forbearance and mortgage modification may be considered as available loss mitigation tools. The lender must now confirm that the homeowner has experienced a loss of income or an increase of expenses to qualify for special forbearance.

Section 203.552 Fees and Charges after Endorsement

Elimination of Regulatory Control of Post-endorsement Fees and Charges. One comment stated HUD needs to be moving towards eliminating regulatory control over post endorsement fees and charges.

Response: The setting of post endorsement fees and charges by the Department provides consistency where needed and allows regional differences where HUD deems appropriate. Releasing or withdrawing any oversight in setting those fees would lead to far more disparate treatment of mortgagors than is done currently.

Section 203.605 Loss Mitigation Evaluation

When the Mortgagor Does Not Qualify or is Uncooperative. One comment recommended no further evaluations should be necessary once a determination is made that the mortgagor does not qualify or is uncooperative. Another comment requested that to help assure that lenders are not at risk for allegations of fair lending violations, HUD should establish specific standards for actions that mortgagees should take to determine a defaulted borrower's eligibility for loss mitigation measures. Such standards would address the issue of borrowers whose circumstances would qualify them for loss mitigation, but who do not seek out the mortgagee for such assistance.

Response: Mortgagee Letter 96–61 and the checklists in Attachment A to the Letter describe the qualifications for LM and also state that LM should be used where ''appropriate.'' After review and consideration of all LM tools and all the facts of the case, the lender can decide to decline to grant LM to an uncooperative mortgagor in accordance with this general principle of appropriateness.

Under the pre-foreclosure sale (PFS) procedure, the mortgagor's good-faith efforts are required and monitored. Besides PFS, the cooperativeness of the mortgagor would be relevant to special forbearance, partial claim and loan modification. Mortgagee Letter 96–61 requires that, in these cases, the mortgagor should have ''a commitment to remain in'' the home (see checklists in Attachment A). The cooperative participation of the borrower is implicit in this criterion.

Loss mitigation does not add new requirements related to Fair Housing. HUD expects lenders will comply fully with existing fair lending laws and will continue to ensure compliance with those laws. The object of LM is to avoid foreclosure, and lenders must justify use or non-use of all LM tools and reevaluate monthly. In this respect, lenders are directed to HUD's Mortgagee Letter 96–61, page 3, and § 203.605 of this final rule.

Section 203.606 Pre-Foreclosure Review

Notice to the Mortgagor of the Consequences of Default. One comment stated that although the rule states the required notification to the mortgagor of default and the mortgagee's intent to foreclose will be in ''a format prescribed by the Secretary,'' the industry would welcome the opportunity to comment on the content of the notice. The notice should be firm in explaining the consequences of inaction, while also being informative and consumer-friendly to encourage communication with the mortgagee.

Response: HUD will seek comments relative to possible modifications of mortgagor notification required by § 203.606.

Use of HUD-approved Housing Counseling Agencies. One comment suggested that the use of Housing Counseling Agencies should be a part of all mortgagee letters to mortgagors when requesting payments and/or information. Another comment stated that HUD should strongly recommend that mortgagees provide donations to counseling agencies in their communities.

Response: Regarding the use of housing counseling agencies, HUD's current practice, in accordance with the requirements of § 203.602, is that the lender must send the mortgagor a delinquency notice (currently in the form of the ''Avoiding foreclosure'' pamphlet) during the second month of delinquency (see Handbook 4330.1 REV–5, Par. 7–7G and Appendix 19). This notice includes a recommendation to contact a HUD-approved housing counseling agency.

Some lenders already sponsor or form partnerships with counseling agencies. However, it would be inappropriate for HUD to recommend that mortgagees make donations to counseling agencies.

Section 203.616 Recasting of Mortgage

Time for lenders to implement the recasting requirement. One comment noted that mortgagees generally do not have established procedures and documents for modifications and recasting of insured loans. Mortgagees will have to establish such procedures after reviewing detailed underwriting standards yet to be set by HUD. March 1, 1997, is too soon to implement the recasting requirement.

Response: HUD believes that with the issuance of Mortgagee Letter 96–61, November 12, 1996, and Mortgagee Letter 97–17, May 1, 1997, the lenders have sufficient time to gear up for this procedure.

Scope of recasting. One comment noted the regulation is currently written as if recasting the unpaid amount due over the remaining term of the mortgage is the only option available. Language should be added to allow specifically for modification such as an interest rate reduction, or conversion from an ARM to a fixed rate mortgage. In addition, the comment recommended the heading for this section should read: *Modifying/Recasting of mortgage.*

Response: HUD acknowledges the potential ambiguity of the rule language pointed out by this comment and has clarified the rule to indicate that adjustments to both term and interest rate are permitted. There is no prohibition of reduction of interest rate or conversion from ARM to fixed. In addition, HUD is changing the titles of §§ 203.342 and 203.616 to ''Mortgage Modifications.''

Recasting Current Loans and Fair-lending Complaints. HUD should reconsider whether to provide for recasting of a current loan, because of the small population of loans that would be served by this provision, which may, nonetheless, give rise to complaints based on fair housing or other grounds.

Response: The LM tools represent a spectrum of foreclosure-avoidance techniques, not all of which can be applied to particular buyers, but which as a whole represent substantial opportunities for FHA borrowers to maintain home ownership. As stated in the response under § 203.605, above, loss mitigation does not add new requirements related to Fair Housing; HUD expects lenders will comply fully with existing fair lending laws and will continue to ensure compliance with those laws.

V. Findings and Certifications

Environmental Impact

At the time of publication of the interim rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The interim rule is adopted by this final rule without significant change. Accordingly, the initial Finding of No Significant Impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Congressional Review of Major Final Rules

This rule is a ''major rule'' as defined in the Administrative Procedure Act (5 U.S.C. 804(2)), and will be submitted to the Congress for review in accordance with the statutory procedure.

Regulatory Flexibility Act

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Most of the economic impact of the rule will affect the Department, which stands to benefit from the successful implementation of the loss mitigation techniques addressed by the rule.

Executive Order 12612, Federalism

HUD has determined, in accordance with Executive Order 12612, *Federalism*, that this rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, since the rule involves primarily relationships between the Department and private entities.

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk on children.

The Catalog of Federal Domestic Assistance Number for Single Family HOME Insurance is 14.117.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, parts 203 and 206 of title 24 of the Code of Federal Regulations are amended by adopting the interim rule published in the **Federal Register** on July 3, 1996 (61 FR 35014) as final with the following changes:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. A new § 203.341 is added to read as follows:

§ 203.341 Partial claim.

If the conditions of § 203.371 are met and a partial claim is paid pursuant to that section, the contract of insurance shall continue in force, except as otherwise provided in this subpart.

3. Section 203.342 is revised to read as follows:

§ 203.342 Mortgage modification.

If a mortgage is recast pursuant to § 203.616, the principal amount of the mortgage, as modified, shall be considered to be the ''original principal balance of the mortgage'' as that term is used in § 203.401.

4. In § 203.355, paragraphs (a), (c), (g) introductory text, and (h) are revised and a new paragraph (i) is added to read as follows:

§ 203.355 Acquisition of property.

(a) *In general.* Upon default of a mortgage, except as provided in paragraphs (b) through (i) of this section, the mortgagee shall take one of the following actions within nine months from the date of default, or within any additional time approved by the Secretary or authorized by §§ 203.345 or 203.346. For mortgages where the date of default is on or after February 1, 1998, the mortgagee shall take one or a combination of the following actions within six months of the date of default or within such additional time approved by HUD or authorized by §§ 203.345 or 203.346:

(1) Obtain a deed-in-lieu of foreclosure (see §§ 203.357, 203.389 and

203.402(f) of this part) with title being taken in the name of the mortgagee or the Secretary;

(2) Commence foreclosure;

(3) Enter into a special forbearance agreement under § 203.614;

(4) Complete a modification of the mortgage under § 203.616;

(5) Complete a refinance of the mortgage under § 203.43(c);

(6) Complete an assumption under § 203.512;

(7) File a partial claim under § 203.371; or

(8) Initiate a pre-foreclosure sale under § 203.370.

* * * * *

(c) *Prohibition of foreclosure within time limits.* If the laws of the State in which the mortgaged property is located, or Federal bankruptcy law:

(1) Do not permit the commencement of foreclosure within the time limits described in paragraphs (a), (b), (g), (h) and (i) of this section, the mortgagee must commence foreclosure within 90 days after the expiration of the time during which foreclosure is prohibited; or

(2) Require the prosecution of a foreclosure to be discontinued, the mortgagee must recommence the foreclosure within 90 days after the expiration of the time during which foreclosure is prohibited.

* * * * *

(g) *Pre-foreclosure sale procedure.* Within 90 days of the end of a mortgagor's participation in the pre-foreclosure sale procedure, *or* within the time limit described in paragraph (a) of this section, whichever is later, if no closing of an approved pre-foreclosure sale has occurred, the mortgagee must obtain a deed in lieu of foreclosure, with title being taken in the name of the mortgagee or the Secretary, or undertake one of the actions listed at § 203.355(a). The end-of-participation date is defined as:

* * * * *

(h) *Special forbearance.* If the mortgagor fails to meet the requirements of a special forbearance under § 203.614 and the failure continues for 60 days, the mortgagee must undertake one of the actions listed at § 203.355(a) within the time limit described in paragraph (a) of this section or 90 days after the mortgagor's failure to meet the special forbearance requirements, whichever is later.

(i) *Modification under § 203.616, refinance under § 203.43(c), or assumption under § 203.512.* Provided that the mortgagee has established the mortgagor's eligibility within the time frame provided in § 203.355(a), if a mortgagee enters into a loss mitigation relief measure (*i.e.*, modification under § 203.616, refinance under § 203.43(c), or assumption under § 203.512) and it fails, the six-month period provided in § 203.355(a) is extended by an additional 90 days to allow the mortgagee to try another loss mitigation tool or go to foreclosure.

5. In § 203.371, paragraphs (b)(1) and (b)(5) are revised to read as follows:

§ 203.371 Partial claim.

* * * * *

(b) * * *

(1) The mortgagor has been delinquent for at least 4 months or such other time prescribed by HUD;

* * * * *

(5) The mortgagor is not financially qualified to support monthly mortgage payments on a modified mortgage or on a refinanced mortgage in which the total arrearage is included.

* * * * *

6. In § 203.402, paragraph (f) is revised to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

* * * * *

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to HUD, but not including any costs borne by the mortgagee to correct title defects) actually paid by the mortgagee and approved by HUD, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater. For mortgages insured on or after February 1, 1998, the Secretary will reimburse a percentage of foreclosure costs or costs of acquiring the property, which percentage shall be determined in accordance with such conditions as the Secretary shall prescribe. Where the foreclosure involves a mortgage sold by the Secretary on or after August 1, 1969, or a mortgage executed in connection with the sale of property by the Secretary on or after such date, the mortgagee shall be reimbursed (in addition to the amount determined under the foregoing) for any extra costs incurred in the foreclosure as a result of a defect in the mortgage instrument, or a defect in the mortgage transaction or a defect in title which existed at or prior to the time the mortgage (or its assignment by the Secretary) was filed for record, if the mortgagee establishes to the satisfaction of the Commissioner that such extra costs are over and above those customarily incurred in the area.

* * * * *

7. In § 203.414, paragraph (a) is revised to read as follows:

§ 203.414 Amount of payment—partial claims.

(a) *Claim Amount.* Where a claim for partial insurance benefits is filed in accordance with § 203.371, the amount of the insurance benefits shall consist of the arrearage not to exceed an amount equivalent to 12 monthly mortgage payments, and any costs prescribed by HUD related to the default.

* * * * *

8. In § 203.552, paragraph (a) introductory text is revised to read as follows:

§ 203.552 Fees and charges after endorsement.

(a) The mortgagee may collect reasonable and customary fees and charges from the mortgagor after insurance endorsement only as provided below. The mortgagee may collect these fees or charges from the mortgagor only to the extent that the mortgagee is not reimbursed for such fees by HUD.

* * * * *

9. Section 203.616 is revised to read as follows:

§ 203.616 Mortgage modification.

The mortgagee may modify a mortgage for the purpose of changing the amortization provisions by recasting the total unpaid amount due for a term not exceeding 360 months. The mortgagee must notify HUD of such modification in a format prescribed by HUD within 30 days of the execution of the modification agreement.

Dated: September 16, 1997.

Stephanie A. Smith,

General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 97–29374 Filed 11–5–97; 8:45 am]

BILLING CODE 4210–27–P

Thursday
November 6, 1997

Part III

Environmental Protection Agency

40 CFR Part 80

Fuels and Fuel Additives; Elimination of Oxygenated Fuels Program Reformulated Gasoline (OPRG) Category From the Reformulated Gasoline Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5917–7]

RIN 2060–AH43

Fuels and Fuel Additives; Elimination of Oxygenated Fuels Program Reformulated Gasoline (OPRG) Category From the Reformulated Gasoline Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action, the reformulated gasoline (RFG) regulations are amended to eliminate the separate treatment for a category of gasoline used in oxygen averaging. This category, oxygenated fuels program reformulated gasoline (OPRG), includes reformulated gasoline intended for use in a state oxygenated fuels program during the winter time. Under the current RFG regulations, a refiner must meet the oxygen content standards on average for the entire pool of gasoline they produce, and for the pool of gasoline they produce that is non-OPRG. EPA is taking this action because it no longer believes a distinction between OPRG and RFG that is not intended for oxygenated fuels program areas (i.e., non-OPRG) is necessary and because removal of the OPRG category would add flexibility and reduce compliance costs for regulated parties, without producing a negative environmental impact. Today's rule also removes a prohibition on adding oxygen to finished RFG, which will provide parties in RFG/oxygenated fuels program overlap areas with added flexibility in meeting both programs' standards.

EFFECTIVE DATE: November 3, 1997.

FOR FURTHER INFORMATION CONTACT: Anne-Marie C. Pastorkovich at (202) 233–9013.

SUPPLEMENTARY INFORMATION:

I. Regulatory Entities

Regulatory categories and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Refiners, importers, oxygenate blenders of reformulated gasoline.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the existing provisions at 40 CFR 80.2, 80.65, 80.67, 80.69, 80.75, 80.77, 80.78, and 80.128, dealing specifically with OPRG. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

On March 17, 1997, EPA proposed amendments to the reformulated gasoline (RFG) regulations that would eliminate the oxygenate program reformulated gasoline (OPRG) category.[1] As explained in that notice, EPA issued the proposed rule for several reasons. First, between 1993, when the final RFG rule was issued, and 1995, when the RFG program was implemented, the number of overlapping oxygenated fuels program and RFG areas significantly decreased. Although EPA is concerned that the statutory mandate for 2.0 weight percent oxygen for RFG is met,[2] the Agency feels that the specific risk of uneven RFG quality due to overlapping oxygenated fuels/RFG program areas is significantly less than was expected when the RFG regulations were promulgated. There is still some risk that an area might receive relatively low oxygen RFG because of averaging, but the risk is no longer as likely to be specifically caused by program overlap as in 1993 and 1994.

Second, based upon EPA estimates made prior to the beginning of the first year of the RFG program, approximately one-third (33%) of all gasoline nationwide was predicted to be RFG. Oxygenated fuels program overlap areas outside of California accounted for approximately one-third (33%) of the total RFG pool, with approximately 19% going to the New York CMSA.[3] EPA believes that any risk that an area might receive low oxygen RFG is significantly less than it appeared in 1993 and 1994. As discussed in great detail in the proposed rule,[4] in 1994, roughly one-third of RFG was expected to be destined for several oxygenated fuels overlap cities outside of California. Today, the New York City CMSA is the only remaining overlap area outside California, although the Phoenix, Arizona moderate ozone nonattainment area opted into the RFG program [5] and is also an oxygenated fuels area. EPA continues to believe that the risk that an area might receive low oxygen RFG can be adequately addressed through another existing compliance mechanism—the RFG surveys required by 40 CFR 80.68.

III. Response to Comments

Effective Date: Three commenters wanted the rule to go into effect by the November 1, 1997, the start date for the 1997–1998 winter oxygenated fuels program. A fourth commenter wanted the rule to go into effect ''as expeditiously as due process considerations allow.'' The rationale for the earliest effective date is to allow regulated parties to take advantage of maximum flexibility.

However, another commenter urged EPA to implement the change effective January 1, 1998, in order to alleviate financial burdens on certain regulated parties. Specifically, companies may have entered into contracts under which they have already paid for credits needed this year. An implementation date earlier than January 1, 1998 would, according to the commenter, devalue those purchased credits without the possibility of a refund to the purchaser.

EPA believes that the rule should go into effect by November 1, 1997, concurrent with the start of the oxygenated fuels program, in order to

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[1] 62 FR 12586 (March 17, 1997).

[2] In oxygenated fuels program areas implemented by states as required by section 211(m) of the Act, the minimum oxygen content during the winter control period is 2.7 weight % oxygen. This minimum for oxygenated fuels control periods is unaffected by today's rule and remains in force. Nothing in today's rule changes the applicable oxygen standards under the Federal RFG or state oxygenated fuels programs.

[3] It should be noted that, since these estimates were made in 1994, some areas have opted out of the RFG program and Sacramento, California joined the program as a required covered area, and comparative volume totals will have changed somewhat as a result. These estimates are not based upon the comparative volume of OPRG to RFG. Rather, they are ''straight'' estimates of a program area's share of the total RFG ''pool'' and are not broken down into compliance categories. The reader should be aware that OPRG gasoline likely represents a smaller, subset of the total volume represented for each area. The untitled document from which the volume estimates were taken has been placed in the public docket, docket # A–97–01, Category II(B). The docket is located at the Air Docket Section, 401 M Street, SW, Room M–1500 Washington, DC and is open Monday through Friday from 8:00 a.m. to 5:30 p.m.

[4] 62 FR 12596, 12588.

[5] ''Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the Phoenix, Arizona Moderate Ozone Nonattainment Area,'' 62 FR 30260 (June 3, 1997). The Arizona opt-in became effective on July 3, 1997 for all persons other than retailers and wholesale purchaser-consumers and August 4, 1997 for retailers and wholesale purchaser-consumers.

allow regulated parties maximum flexibility. A January 1, 1998 start date falling in the middle of the state oxygenated fuels programs, would likely add unnecessary confusion. Delaying the start date until after the 1997–1998 oxygenated fuels season, e.g. until March 1, 1998 or later, would impose an unnecessary burden on the majority of parties. Today's rule removes burdens associated with the maintenance of separate recordkeeping, reporting, and product transfer documentation for OPRG and non-OPRG categories, resulting in a general reduction in compliance costs. A greater cost benefit would be realized by the vast majority of parties if the rule is effective on November 1, 1997, the start date of the oxygenated fuels program. Today's rule eliminates the prohibition on adding oxygen to finished RFG, which provides regulated parties in overlap areas with added flexibility in meeting both RFG and oxygenated fuels program standards.

Although there may be an adverse effect on a few parties, the vast majority will benefit from the earliest implementation of today's rule.

EPA has provided guidance on submitting 1997 RFG reports elsewhere in this notice.

Effects on Compliance Burdens and Recordkeeping

Five commenters agreed that the rule to do away with the distinction between OPRG/non-OPRG will help add flexibility and reduce compliance burdens. Three of these five also agreed that this will also reduce compliance costs. EPA concurs with these statements. A sixth commenter was concerned that this rule will increase refiner's compliance burdens, but did not elaborate on how these burdens will increase. EPA believes that the reduction of the recordkeeping and reporting burdens associated with the OPRG category results in a positive impact in terms of cost, burden, and time for the vast majority of regulated parties.

Reporting

Some commenters who were supportive of the proposal also noted that they might not have sufficient lead time to redesign their accounting methods and reporting software. These commenters asked for flexibility in reporting. One commenter asked that reporting parties should be given the option of reporting the OPRG/non-OPRG categories for reports covering calendar year 1997.

EPA understands that this change may require alterations to some parties' accounting methods and software. For annual reports covering calendar year 1997 and for batch reports after November 1, 1997, a reporting party may choose to report using the OPRG/non-OPRG categories (i.e., to report ''as usual'') or to report all OPRG in the appropriate non-OPRG categories.

For 1997 and subsequent years, EPA will look to the refiner's entire RFG production in order to determine compliance with the annual average for oxygen and will no longer recognize any distinction between OPRG and non-OPRG. The same approach will apply for compliance with the oxygen average for VOC-controlled RFG under the simple model.

EPA plans to amend its reporting forms as soon as practicable in order to reflect the elimination of the OPRG/non-OPRG distinction.

The RFG reports affected by this rule are: ''Reformulated Gasoline Program Oxygen Content Averaging Report'' (Simple Model & Complex Model), ''Reformulated Gasoline Program Credit Transfer Summary Report,'' and the ''Reformulated Gasoline and Anti-Dumping Batch Reports.''

Product Transfer Documentation

Some commenters have asked whether they must eliminate the OPRG/non-OPRG distinction on their product transfer documentation. Redesigned documentation and forms may not be ready by the effective date.

Today's action removes all OPRG/non-OPRG distinctions in the regulations as of the November 1, 1997 effective date. Although parties may continue to use product transfer documentation differentiating OPRG from non-OPRG, such distinction is not required by EPA because it no longer holds any importance. However, regulated parties may wish to phase-out their use of OPRG category reporting, in order to reduce confusion.

Effects on Oxygenate Use/Toxic Increase

One commenter stated that removal of the OPRG category will cause refiners to use less oxygenate and more aromatics in their gasoline. The addition of aromatics would substitute for lost octane. This effect was not quantified by the commenter, who stated that today's rule will cause the gasoline to emit more toxics.

It is important to remember that EPA has not altered the standards applicable to refiners for oxygen content and toxics under either the reformulated gasoline or oxygenated fuels programs. Furthermore, the gasoline quality survey program for oxygenates and toxics, and other enforcement mechanisms still exist to ensure that the full environmental benefits of the oxygenate content and toxics standards are realized.

It is possible that elimination of the OPRG/non-OPRG distinction may result in some decrease in the use of oxygenates, since credits generated in RFG areas that are also oxygenated fuels program areas (i.e. areas requiring a relatively high oxygen content of least 2.7 weight % oxygen during the winter months) may be used in RFG areas that are not oxygenated fuels program areas (i.e. areas requiring at least 2.0 weight % oxygen all year round). If oxygenate use decreases in some RFG/non-oxygenated fuels program areas, it is possible that toxics may increase in those areas. Nevertheless, EPA believes that the survey mechanism (discussed in greater detail for the following comment) is adequately designed to ensure the gasoline quality in each covered area will meet the standards on average for toxics.

Effects on Oxygenate Use/Survey Failures

EPA received comments pertaining to the oxygenate use and survey failures. The commenters all agreed that EPA's enforcement mechanisms, including gasoline quality surveys, provide a means to ensure compliance with RFG program requirements. Two commenters thought that there may be a marginal increase in risk, but this would be discovered through the surveys and corrected.

One commenter was concerned that blenders will take advantage of the elimination of the OPRG/non-OPRG distinction to minimize oxygenate use and this will cause areas to fail the surveys. A commenter felt that survey failures result from ''refiners [who] are learning to use the [credit trading] program.'' [6]

EPA agrees that the risk of survey failures may increase in the absence of the OPRG/non-OPRG distinction, because more credits from RFG areas with wintertime oxygenated fuels program may be used by refiners to show compliance with the annual oxygen average applicable to the refiner, with less reliance on use of oxygen in RFG destined for RFG areas that are not

[6] The commenter also urged EPA to ratchet the minimum oxygen standard from 1.5 weight % to 1.6 weight % for areas that failed the oxygen survey series in 1996. On July 31, 1997, EPA published a notice in the **Federal Register** announcing a ratchet for several covered areas. Please refer to ''Change in Minimum Oxygen Content for Reformulated Gasoline—Notice,'' 62 FR 41047 (July 31, 1997) for further information.

wintertime oxygenated fuels program areas. (See the preceding comment.)

The existence of the credit trading program was required by section 211(k)(7) of the Clean Air Act as amended in 1990, 42 U.S.C. § 7545. Compliance with the RFG oxygen standards is shown over the course of a calendar year averaging period. Credits may be traded within and between all covered areas. A general risk always exists, even in the absence of the OPRG/non-OPRG distinction, that one area may receive RFG with a slightly higher oxygen content than another area. The compliance survey provisions, with ratchets upon survey failures, were adopted by the Agency to address this risk. In 1993 and 1994, the specific risk of uneven RFG quality due to overlapping RFG and oxygenated fuels program areas was significantly greater than it is today. Since 1993 and 1994, many areas have redesignated to attainment for carbon monoxide (CO) and were able to drop the oxygenated fuels program. The specific risk that an area might receive relatively low oxygen RFG because of program overlap has lessened, and EPA believes that the existing survey and enforcement mechanisms are adequate to address any additional risks there might be from eliminating the OPRG/non-OPRG category.

Phoenix, AZ

Phoenix, AZ recently opted in to the Federal RFG program. One commenter stated that this should not affect the decision to remove the OPRG reporting category. EPA agrees with this comment. Overall, the number of non-California RFG/oxygenated fuels program overlap areas has decreased significantly since the RFG program regulations were finalized in 1993. EPA does not believe that the addition of Phoenix to the program warrants the burden and expense associated with retention of the OPRG category.

Economic Impact

EPA received one comment from a party who claimed that today's rule might have an unspecified negative economic impact on one sector of the oxygenate industry (i.e., the sector that deals with oxygen credit contracts). Another commenter stated that the effort of eliminating the OPRG/non-OPRG distinction may be a great one compared to the benefit received. All other commenters endorsed the proposed changes as economically beneficial.

EPA believes that the vast majority of regulated entities, including small businesses, are reasonably expected to experience significant cost savings as a result of today's regulation. EPA does not believe that today's action will, in and of itself, have any significant impact on oxygenate markets.

EPA disagrees with the characterization that the elimination of removing the OPRG/non-OPRG distinction would require great effort. The Agency has designed the regulatory changes to permit great flexibility for all affected parties. For example, EPA has permitted flexibility in reporting for all RFG and anti-dumping reports covering calendar year 1997 and due to be submitted on or after November 1, 1997.

III. Today's Rule

EPA is amending the Federal RFG regulations to remove the use of a separate OPRG category and to eliminate the distinction between OPRG and non-OPRG. The following sections would be affected by today's proposal. In most cases, the changes are minor and would remove references to, and distinctions between, the eliminated OPRG category and RFG which is non-OPRG.

40 CFR Part 80, Section	Description of change
Section 80.2—Definitions. 80.2(nn)	Definition of ''Oxygenated fuels program reformulated gasoline,'' or ''OPRG'' is deleted.
Section 80.65—General requirements for refiners, importers, and oxygenate blenders. 80.65(d)(2)(iii) (A) and (B).	Requirements for designation of gasoline as OPRG or non-OPRG are deleted.
Section 80.67—Compliance on average. 80.67(f)(2)(ii), 80.67(h)(1)(v) (A) and (B).	Deletes requirements to meet oxygen average separately and to segregate credits for non-OPRG, since the OPRG versus non-OPRG distinction is eliminated.
Section 80.69—Requirements for downstream oxygen blending. 80.69(f) (1) and (2).	These sections are deleted, to reflect that there would no longer be a category known as ''OPRG.'' [7]
Section 80.75—Reporting requirements. 80.75(f)(2)(ii)(A) (1) through (4) and (B) (1) and (2); 80.75(f)(2)(iii)(B); 80.75(h)(2) (i) and (ii) 80.75(p).	For 80.75(f)(2)(ii)(A) (1) through (4), the OPRG and non-OPRG distinction is eliminated. Thus, the only categories remaining are VOC-controlled (divided into subcategories 1 and 2) and non-VOC-controlled RFG. Section 80.75(f)(2)(ii)(B) (1) and (2) is deleted in order to eliminate to OPRG and non-OPRG distinction. Section 80.75(f)(2)(iii)(B), which refers to gasoline designated as non-OPRG, is deleted.
Section 80.77—Product transfer documentation. 80.77(g)(1)(ii)	Requirement to identify gasoline as OPRG or non-OPRG is deleted.
Section 80.78—Controls and prohibitions on reformulated gasoline. 80.78(a)(6).	Before today's rule, this section prohibits addition of oxygen to finished RFG, unless such RFG is designated as OPRG used in an oxygenated fuels control area during the oxygenated fuels control period. This OPRG ''exception'' is amended to allow for elimination of the OPRG/non-OPRG categories. Specifically, the amended section allows for addition of oxygenate to RFG intended for and used in an oxygenate gasoline program area.
Sections 80.128 and 80.129—Agreed upon procedures for refiners and importers and Agreed upon procedures for oxygenate blenders. 80.128(d)(2) and 80.129(d)(3)(iv).	Requirement to compare PTD designation consistency for OPRG versus non-OPRG is removed. Similar requirement for downstream oxygenate blenders is removed.

[7] Note the change to section 80.78(a)(6).

IV. Statutory Authority

Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

V. Environmental Impact

This rule is expected to have no environmental impact. The original reason for the OPRG category was concern that RFG quality might suffer in areas that were not both oxygenated fuels program and RFG areas. There were several such areas when the RFG rules were promulgated. However, there are now only two areas, the New York/New Jersey/Connecticut CMSA and

Phoenix, Arizona, which currently have overlapping programs during the winter months. EPA is aware of no data indicating that today's regulation will encourage the use of lower oxygen content RFG. The oxygenated fuels program and RFG program oxygen standards remain in place. The RFG standards are Federally enforced through a variety of enforcement mechanisms, including the oxygen survey program, which is specifically designed to ensure that oxygen standards are met on average in all RFG cities.

VI. Economic Impact and Impact on Small Entities

EPA has determined that this final rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Today's regulation would have a positive economic impact on the great majority of entities regulated by the RFG regulation, including small businesses. The elimination of the OPRG/non-OPRG distinction would result in increased flexibility for regulated parties, including refiners, importers, and blenders. Specifically, elimination of this distinction from the RFG regulations alleviates the burden and cost associated with maintenance of separate recordkeeping, reporting, and product transfer documentation category for OPRG and non-OPRG gasoline. Elimination of the OPRG/non-OPRG distinction should also result in a general reduction of compliance costs associated with the need to meet the oxygen average separately for two classes of RFG. A regulatory flexibility analysis has therefore not been prepared.

VII. Paperwork Reduction Act

Per the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, this action does not involve the addition of any collection of information as defined therein.

VIII. Executive Order 12866

Under Executive Order 12866,[8] the Agency must determine whether a regulation is ''significant'' and therefore subject to interagency review under the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[9]

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to interagency review under the Order.

IX. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Pub. L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this rule does not include a federal mandate as defined in UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Regulatory Flexibility Act as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Gasoline, Reformulated gasoline, Motor vehicle pollution.

Dated: October 31, 1997.

Carol M. Browner,

Administrator.

40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

§ 80.2 [Amended]

2. Section 80.2 is amended by removing and reserving paragraph (nn).

§ 80.65 [Amended]

3. Section 80.65 is amended by removing and reserving paragraph (d)(2)(iii).

4. Section 80.67 is amended by removing and reserving paragraph (f)(2)(ii) and by revising paragraphs (h)(1)(v)(A)*(1)* and (h)(1)(v)(A)*(2)* and by removing and reserving paragraph (h)(1)(v)(B) and by removing paragraphs (h)(1)(v)(A)*(3)* and (h)(1)(v)(A)*(4)* to read as follows:

§ 80.67 Compliance on average.

* * * * *

(h) * * *

(1) * * *

(v) * * *

(A) * * *

(1) VOC controlled; and

(2) Non-VOC controlled.

(B) [Reserved]

* * * * *

§ 80.69 [Amended]

5. Section 80.69 is amended by removing paragraph (f).

6. Section 80.75 is amended by revising paragraphs (f)(2)(ii)(A)*(1),* (f)(2)(ii)(A)*(2),* (h)(2)(i)(A) and (h)(2)(i)(B) and by removing paragraphs (f)(2)(ii)(A)*(3),* (f)(2)(ii)(A)*(4),* (h)(2)(i)(C), (h)(2)(i)(D) and by removing and reserving (h)(2)(ii) to read as follows:

§ 80.75 Reporting requirements.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

[8] 58 FR 51735 (October 4, 1993).

[9] Id. at section 3(f)(1)–(4).

(A) * * *

(1) Gasoline designated as VOC-controlled; and

(2) Gasoline designated as non-VOC-controlled.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(A) VOC-controlled; and

(B) Non-VOC-controlled.

* * * * *

7. Section 80.77 is amended by removing and reserving paragraph (g)(1)(ii).

8. Section 80.78 is amended by revising paragraph (a)(6) to read as follows:

§ 80.78 Controls and prohibitions on reformulated gasoline.

(a) * * *

(6) No person may add any oxygenate to reformulated gasoline, except that such oxygenate may be added to reformulated gasoline provided that such gasoline is used in an oxygenated fuels program control area during an oxygenated fuels control period.

* * * * *

9. Section 80.128 is amended by revising paragraph (d)(2) to read as follows:

§ 80.128 Agreed upon procedures for refiners and importers.

* * * * *

(d) * * *

(2) Compare the product transfer documents designation for consistency with the time and place, and compliance model designations for the tender (VOC-controlled or non-VOC-controlled, VOC region for VOC-controlled, summer or winter gasoline, and simple or complex model certified); and

* * * * *

10. Section 80.129 is amended by revising paragraph (d)(3)(v) to read as follows:

§ 80.129 Agreed upon procedures for downstream oxygenate blenders.

* * * * *

(d) * * *

(3) * * *

(v) Review the time and place designations in the product transfer documents prepared for the batch by the blender, for consistency with the time and place designations in the product transfer documents for the RBOB (e.g. VOC-controlled or non-VOC-controlled, VOC region for VOC-controlled, and simple or complex model).

* * * * *

[FR Doc. 97–29385 Filed 11–5–97; 8:45 am]

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Federal Register

Thursday
November 6, 1997

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Coal Moisture; Republication; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

RIN 1029–AB78

Coal Moisture; Republication

Editorial Note: FR Doc. 97–22903 was originally published as Part II in the issue of Tuesday, August 29, 1997. The corrected document is republished below in its entirety at the request of the agency, due to the omission of the Table numbers.

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is amending its regulations governing how the excess moisture allowance is determined for reclamation fee purposes. This action defines terms and phrases related to the collection and testing of coal samples used to determine the inherent and total moisture of coal; identifies acceptable American Society for Testing and Materials (ASTM) standard sampling and testing methods for high and low-rank coals; prescribes frequencies for collecting and testing coal samples; and provides the coal industry with formulas for use in calculating an excess moisture tonnage allowance for the purpose of reducing the weight of coal subject to the abandoned mine land reclamation fee.

The regulatory revision clarifies and simplifies technical guidance for all users, and provides the coal industry with standard criteria for calculating an excess moisture allowance on all coals subject to reclamation fee payment. The intended effect of this revision is to enhance compliance with the provisions of section 402 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The prescribed criteria will ensure that all tonnage reductions for excess moisture are taken on comparable bases.

EFFECTIVE DATE: This regulation is effective October 1, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Kewal Kohli, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220; telephone (412) 937–2175.

SUPPLEMENTARY INFORMATION:

I. Background

Section 402(a) of the SMCRA requires all operators of coal mining operations subject to its provisions to pay a reclamation fee on each ton of coal produced. In December 1977, OSM first promulgated regulations to implement this provision (42 FR 62714, December 13, 1977). Briefly, the regulations require that the Abandoned Mine Land (AML) fees must be paid on the actual gross weight of the coal, at the time of the first transaction (sale, transfer of ownership, or use) involving the coal. This regulation has been in effect basically unchanged since 1977. In 1982, OSM revised the regulatory language to clarify the point in time of fee determination and to stress that the actual gross weight of the coal must be used for fee calculation. At that time OSM also specifically noted that no fees were owed on impurities physically removed before the sale, transfer of ownership, or use. In 1988, OSM again revised this regulation to allow an operator who mined coal after July 1, 1988, to elect to take an allowance for moisture contained in the coal at the time of sale that is determined to be in excess of the inherent, or natural bed, moisture in the coal.

Initially, OSM adopted the excess moisture allowance to address an inconsistency in the methods of determining coal weight under various Federal taxation requirements. At the time OSM proposed to amend its regulation to allow a deduction for excess moisture, the ASTM Committee on Coal and Coke, whose membership included representatives of the Internal Revenue Service (IRS) and OSM, was conducting a study to develop and/or confirm precision statements for the ASTM standard test method used to estimate the bed moisture in high-rank coals, ASTM D1412–85, as it applied to all coals. In a letter of November 18, 1987, the IRS submitted the following comment in response to the OSM proposal, ''the results of the ASTM or a similar study should be received before one test is prescribed for use by all taxpayers.''

As an interim measure, until adequate and fully reliable testing procedures became available for coals of all ranks, OSM's 1988 adopted regulation incorporated a suggestion made by the IRS. OSM decided to rely on a facts and circumstances test to allow an operator to elect to take an allowance for excess moisture provided the operator could demonstrate, through competent evidence, that there was a reasonable basis for determining the existence and amount of excess moisture. OSM's standard of reasonableness required an operator to provide sufficient documentation to sustain the weight reduction. Although no specific time periods were given for testing, an operator was also required to prove that time frames chosen to measure the existence and amount of excess moisture were reasonable.

The preamble to the 1988 rule discussed OSM's willingness to accept the ASTM standard test methods to determine inherent moisture, ASTM D1412–85, and total moisture, ASTM D3302–82, pending the availability of more suitable alternatives. OSM recognized that these tests were not always reliable for this purpose and acknowledged its willingness to accept other testing methods for some subbituminous and lignite coals. OSM also stated its intent to develop technical guidance to assist operators and to assure uniform application of the excess moisture allowance throughout the industry.

The final rule which OSM adopted in 1988, at 30 CFR 870.18, allowed an operator to elect to reduce the weight of coal tonnage subject to reclamation fee payment by a percentage of excess moisture estimated to be contained in the coal at the time of fee assessment. OSM subsequently issued five AML Payer Letters to provide technical guidance to the coal industry and assist with the application of this regulation. OSM also published the guidance in the OSM Payer Handbooks.

OSM's audits of excess moisture reduced tonnages find that operators frequently fail to conform to inherent moisture test procedures described in AML Payer Letters, and do not provide adequate support for procedures they do use. Some operators mining large volumes of low-rank coal base tonnage reductions on test data that is known to be unreliable.

On December 3, 1996 (61 FR 64220), OSM published its proposal for revising the rule in the **Federal Register**. The public comment period closed on February 3, 1997.

II. Discussion of the Final Rule and Responses to Comments

Five commenters commented on the proposed rule revision: two coal companies, a trade association, a law firm representing a coal company, and an industry consulting firm. The majority of the commenters supported the intent of consolidating previous guidance into a single rulemaking, but expressed various concerns on specific issues.

Based on the comments received, OSM is revising its regulations governing the excess moisture allowance to codify regulatory technical requirements as proposed, with some changes. The proposal incorporates by reference ASTM standards used for collecting and testing a coal sample as specified in 30 CFR 870.19(a), Table 1 and Table 2, and 30 CFR 870.20(a), Tables 1, 2, and 3. The ASTM standards were published in the 1994 Annual Book of ASTM Standards, Volume 05.05. A copy of the ASTM standards is available for inspection at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, and at the Office of the Federal Register, 800 North Capitol St., Washington, DC. The rule establishes a frequency for using ASTM standard test methods on coals of all ranks, and adopts the method approved by the ASTM to establish inherent moisture in low-rank coal, the ASTM D1412–93, Appendix X1. Use of this procedure for low-rank coal will ensure excess moisture allowances taken on low-rank coals are on a comparable basis to those taken on high-rank coal, and all excess moisture allowances are fair and equitable. Definitions for high and low rank coal are provided. The rule also includes an option that provides operators with a method to calculate an allowance for the excess moisture present in as-shipped coal. This is of particular benefit when an operator sells large volumes of coal, and/or sells coal with a substantial variance between the total and inherent moisture.

A. Section 870.5—Definitions

None of the commenters addressed this section, and the revised definitions for excess, inherent, and total moisture are being adopted as proposed. The definition for excess moisture is revised by including, by reference, a formula for use in calculating excess moisture in high and low-rank coals. The formula to be used for high-rank coals is found in a new section 870.19 and the formula for low-rank coals is found in a new section 870.20. The existing definition of inherent moisture is expanded to incorporate by reference the specific ASTM methods of sample collection and test procedures shown in section 870.19, Table 2, Calculating INHERENT moisture percentage in HIGH-rank coals, and section 870.20, Table 2, and Table 3, Calculating INHERENT moisture percentage in LOW-rank coals. The existing definition of total moisture is expanded to incorporate by reference ASTM criteria in section 870.19, Table 1, for Calculating the TOTAL moisture percentage in HIGH-rank coals, and section 870.20, Table 1, for Calculating the TOTAL moisture percentage in LOW-rank coals. The expansion of the existing definitions to incorporate by reference specific ASTM sample collection methods and test procedures provides precise technical standards to facilitate operator compliance with OSM's requirements, and provides a consistent basis to calculate all excess moisture allowances.

B. Section 870.18—General Rules for Calculating Excess Moisture

The modifications to 30 CFR 870.18, excess moisture content allowance at section 870.18(a), (b), and (c) are adopted as proposed. The previous section 870.18(a) required an operator to demonstrate through competent evidence that the basis for determining the existence and amount of excess moisture is reasonable. Section 870.18(b) required standard laboratory analyses for testing inherent and total moisture. Section 870.18(c) required an operator who blended coal mined from multiple seams prior to the initial sale, transfer, or use of the coal to test for variations in the inherent moisture amounts from different seams.

This revision replaces the reasonableness standard found at section 870.18(a), the generic laboratory test requirement at section 870.18(b), and the requirement for a separate test of coal from each seam mined prior to blending the coal for sale, transfer of ownership or use at section 870.18(c). The revision also recognizes the distinct differences in high and low-rank coals in sections 870.19 and 870.20. Section 870.19 provides acceptable standards for collecting and testing a sample of high-rank coals to establish the percentage of inherent and total moisture contained in the coal, and calculate the excess moisture allowance. Section 870.20 provides like standards for calculating the excess moisture allowance for low-rank coals.

Revised section 870.18(c) adds definitions to further explain the meaning of terms as they are used in new sections 870.19 and 870.20. ''As-shipped coal'' and ''tipple coal'' is defined as the coal found at the mine or loading facility. A precise meaning for a ''channel sample'' and ''core sample'' is given and the definitions incorporate by reference the specific ASTM procedure used to take the particular kind of sample. The ''correction factor'' is added as the method used to establish the difference between the equilibrium moisture and inherent moisture in low-rank coals under section 870.20. ''Equilibrium moisture'' is defined as the method used to estimate the inherent moisture in all coals, and ASTM D1412 and ASTM D1412, Appendix X1, are incorporated by reference. Types of ''high-rank coals'' and ''low-rank coals'' are defined to explain how these terms are used throughout sections 870.5 and 870.18–20.

C. Section 870.19—How To Calculate Excess Moisture in HIGH-Rank Coals

The new section 870.19, which provides standard criteria for an operator to use to establish excess moisture in high-rank coals, is being adopted as proposed. Table 1 includes the ASTM standard sample collection method, ASTM D2234–89, *Standard Test Methods for Collection of a Gross Sample of Coal,* that OSM will accept for use as the basis for calculating the percentage of total moisture in as-shipped high-rank coals each day the coal is either shipped or used. Table 1 also provides the test procedure, ASTM D3302–91, *Standard Test Method for Total Moisture in Coal,* that would be acceptable for that purpose.

Two commenters suggested that more than one test method be accepted for determining total moisture in high-rank coals. The prescribed test methodology is designed to provide operators with the most reliable means of determining the total moisture in the coals. While other methods are available, the results produced may be less accurate, and they are not incorporated as being acceptable in all cases. Operators wishing to use other methodologies should obtain prior OSM approval to avoid possible disallowance of their excess moisture amounts. The operator must demonstrate that the test used yields accurate results.

One commenter opposed the requirement to test for total moisture each day coal is shipped or used because:

—It would represent an excessive burden for small to medium-sized operators who do not now test for total moisture every day they ship coal;

—The cost involved with testing for total moisture every day in many cases will either exceed or substantially diminish the value of the coal moisture deduction; and
—The previous regulation did not require it.

The commenter recommended that one analysis of each stockpile of coal be allowed as an alternative to daily testing. OSM has considered these comments, but is retaining the daily testing requirement. The basis for the coal moisture deduction is to recognize that coal operators generally are not compensated for the weight of excess moisture in the coal they ship, and therefore, should not be required to pay fees on that weight. The total moisture of the coal can vary significantly from day to day based on weather and other conditions. The commenter stated that a single test of each stockpile, if depleted in 10 days or less, would provide an average value of the total moisture percentage for the stockpile for each day that the coal was used or shipped. In OSM's view, such an approach will not adequately recognize the variations in day-to-day moisture amounts and tonnages shipped. The more this relationship is obscured, the less relevant it becomes in recognizing the weight of excess moisture for which the operator may not be compensated.

OSM also recognizes that the cost of daily moisture tests could exceed the value of the excess moisture fee deduction that would be derived. For that reason, OSM emphasizes in section 870.18(a) that the operator may use the customer's test results on the shipped coal in support of an excess moisture deduction. It has been OSM's experience that the majority of buyers conduct such tests as part of their efforts to ensure quality. By obtaining copies of the test results and related records, the seller could avoid the expense of testing.

The daily total moisture test results must be converted to quarterly figures to be reported to OSM on the OSM–1 Form, Coal Reclamation Fee Report. To calculate the quarterly total moisture percentage an operator should: (1) Multiply the daily total moisture percentage by the tonnage shipped or used that day, to find the daily total moisture tonnage; and, (2) add the daily total moisture tonnage for each day in the quarter; and, (3) add the daily tonnage shipped or used in the quarter, to find the total tonnage shipped or used during the quarter. Then, divide the sum of the daily total moisture tonnage, step (2), by the sum of the daily tonnage shipped or used in the quarter, step (3). This will result in the total moisture percentage in high-rank coals for the quarter which is reported on the Coal Reclamation Fee Report.

Table 2 provides three methods for sampling high-rank coals, and testing the sample to determine the inherent moisture percentage that will be acceptable to OSM. To collect a coal sample directly from a coal seam an operator could use either a core or a channel sample method. If a core sample is collected the operator is required to collect the sample using procedures in ASTM D5192–91, *Standard Practice for Collection of Coal Samples from Core* and to test by ASTM D1412–93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C.* If a channel sample is used, the operator is required to collect the sample using procedures in ASTM D4596–93, *Standard Practice for Collection of Channel Samples of Coal in a Mine* and to test by either ASTM D1412–93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C,* or ASTM D3302–91, *Standard Test Method for Total Moisture in Coal.* To collect a sample of blended coal, as-shipped coal, tipple coal, commingled coal, or coal from slurry ponds an operator will use procedures in ASTM D2234–89, *Standard Test Methods for Collection of a Gross Sample of Coal* and test by ASTM D1412–93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C* to estimate the inherent moisture.

An operator may select one of two options for timing inherent moisture tests, either quarterly or monthly. If a quarterly inherent moisture test is chosen, the operator must report the results of one inherent moisture test taken at any time during the quarter on the OSM–1 form for the quarter in which the test was taken. If monthly inherent moisture testing is preferred, the operator must create a 24-month inherent moisture baseline during the first 24-months a coal seam is in continuous operation. To create the 24-month inherent moisture baseline, an operator must collect and test one sample in each month of the calendar quarter. The quarterly inherent moisture percentage reported to OSM for each of the first 8 quarters a seam is in continuous operation is then based on a weighted average of the 3-monthly inherent moisture tests results from each quarter. To determine the quarterly weighted average inherent moisture percentage an operator would then: (1) Multiply the inherent moisture percentage for one month by the number of tons produced or shipped in that month to find the monthly inherent moisture tonnage; (2) add the inherent moisture tonnage determined in (1) for each of the 3 months to find the quarterly inherent moisture tonnage; (3) divide the inherent moisture tonnage found in (2) by the total number of tons produced or shipped during the three months of the quarter; and, (4) report the weighted average percentage determined in (3) for the quarter to OSM on the OSM–1 form. After the first 24-months, an operator would use an updated rolling average percentage to report inherent moisture percentages for all subsequent quarters in which a coal seam is continuously mined. The rolling average percentage would be calculated by: Adding the results of one inherent moisture test of one coal sample collected during every 12-month period to the inherent moisture percentages for the preceding 23 tests, and dividing the sum of these tests by 24.

Section 870.19(a) provides instruction on how an operator would calculate the excess moisture in high-rank coals by using one of two methods. One method involves the simple subtraction of the inherent moisture percentage from the total moisture percentage as it is found in the existing rule. OSM expects that most operators of small to medium size mines would likely prefer to continue to use this method. A new alternative formula is added as a second method in section 870.19(a) that allows an adjustment in the excess moisture calculation for a percentage of inherent moisture contained in the as-shipped coal. Some operators who either mine a large volume of coal, or mine coal with a significant variance in total and inherent moisture, have requested OSM's approval to use this formula for calculating a tonnage reduction for excess moisture. OSM is now providing this option as an alternative to the existing formula used to determine the excess moisture percentage. The excess moisture percentage found in section 870.19(a) is multiplied by the tonnage sold, transferred, or used during the quarter to determine the excess moisture reduced tonnage for the quarter under section 870.19(b).

D. Section 870.20—How To Calculate Excess Moisture in LOW-Rank Coals

A new section 870.20, which provides standard criteria for an operator to use to establish excess moisture in low-rank coals, is being adopted with changes. Table 1 includes the ASTM standard sample collection procedure, ASTM D2234–89, *Standard Test Methods for Collection of a Gross Sample*, and test

procedure, ASTM D3302–91, *Standard Test Method for Total Moisture in Coal*, OSM will accept for use as the basis for calculating the percentage of total moisture in as shipped low-rank coals each day the coal is either shipped or used.

The daily total moisture test results must be converted to quarterly figures to be reported to OSM on the OSM–1, Coal Reclamation Fee Report. To calculate the quarterly total moisture percentage an operator must: (1) Multiply the daily total moisture percentage by the tonnage shipped or used that day, to find the daily total moisture tonnage; (2) add the daily total moisture tonnage for each day in the quarter; and, (3) add the daily tonnage shipped or used in the quarter, to find the total tonnage shipped or used during the quarter. Then, divide the sum of the daily total moisture tonnage, step (2), by the sum of the daily tonnage shipped or used in the quarter, step (3). This will result in the total moisture percentage in low-rank coal for the quarter which would be reported by the OSM–1, Coal Reclamation Fee Report.

Table 2 provides instructions on how an operator will determine the inherent moisture percentage of coal mined from one or more benches of low-rank coals by: collecting one sample of as-shipped coal each month of the calendar quarter using procedure ASTM D2234–89, *Standard Test Methods for Collection of a Gross Sample of Coal*; and testing each sample for equilibrium moisture by ASTM D1412–93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C.*

The operator would calculate the inherent moisture percentage to report to OSM for the quarter by averaging the results from the 3 monthly equilibrium moisture tests, and adding the correction factor.

Table 3 provides the method an operator is required to use to establish the correction factor during the first quarter an excess moisture allowance is taken on low-rank coals mined from a bench or multiple benches. The correction factor is found by using procedures in ASTM D1412–93 Appendix X1, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C* to collect 15 samples of coal from a freshly exposed, unweathered coal seam face during the quarter. All 15 samples would be tested for inherent moisture and equilibrium moisture as required by ASTM D1412–93 Appendix X1, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C.*

In the proposed rule, we stated that 5 samples had to be taken in each month of the first quarter for a total of 15 samples. Three commenters suggested a variety of alternatives, including allowing companies to:

—Perform a single annual collection of 20 samples;
—Collect all 15 samples in a single month; or
—Take 20 to 30 samples annually.

The OSM–1 forms reporting tonnage and moisture amounts are to be filed for each calendar quarter. The purpose of the samples is to help determine the appropriate moisture amount for the coal shipped or used in the calendar quarter being reported. As a result, it is not feasible to delay the sampling and testing beyond that quarter. In response to the commenters, however, we have revised the final rule to state that the sampling and testing need not be done until the first quarter a deduction is taken, and that all 15 samples may be taken anytime during the quarter rather than 5 each month. This is also designed to address some commenters' concerns that sampling on some days during the quarter may be difficult due to harsh weather.

The operator is required to establish the correction factor for the first quarter and all later quarters by: averaging the 15 inherent moisture test results; averaging the 15 equilibrium moisture test results; and, subtracting the average inherent moisture from the average equilibrium moisture.

Three commenters also suggested that a regression formula be allowed to determine the correction factor rather than simple subtraction of the average equilibrium moisture from the average inherent moisture. Generally, regression analysis is a statistical approach which can be used to determine inherent moisture based on its relationship to possibly several other variables of coal content, such as ash, Btu, and equilibrium moisture. We examined this approach and found that it would require sampling for every variable used in the analysis and a substantially greater number of tests to produce reliable results. We also found it difficult to specify all the different variables that should be considered in every situation. As a result, we are not incorporating a regression approach into the final rule. If an operator elects to use a method other than that provided in the rule, the operator should obtain prior OSM approval to avoid having to revert to the simple subtraction method.

One commenter objected to calculating a correction factor for each bench as we originally proposed, pointing out that multiple benches may be mined simultaneously. We have revised the requirement in the final rule to allow an average correction factor to be calculated and applied when such situations exist. The correction factor could be changed at any time provided new samples are taken and all procedures shown in Table 3 are repeated.

III. Procedural Matters

Federal Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, OSM requested comments from the public and the Office of Management and Budget (OMB) on the information collections contained in the proposed rulemaking. Commenters were asked to address: (a) Whether the proposed collection of information is necessary for the proper performance of OSM, including whether the information will have practical utility; (b) the accuracy of OSM's estimate of the burdens 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 collection on the respondents, including the use of automated collection techniques or other forms of information technology. Comments received on the information collection requirements in the proposed rule have been addressed in the preamble above:

Title: Abandoned mine reclamation fund—fee collection and coal production reporting: 30 CFR part 870.

OMB Control Number: 1029–0090.

Abstract: Section 402 of the Surface Mining Control and Reclamation Act of 1977 requires operators of coal mining operations to pay a reclamation fee to the Secretary for deposit in the Abandoned Mine Reclamation Fund for the purpose of reclaiming lands mined and left abandoned, or inadequately reclaimed, prior to the Act's effective date. Reclamation fees are to be paid on each ton of coal produced.

Sections 870.18, 870.19, and 870.20 of the regulations allow an operator to take an excess moisture content allowance when calculating the amount of reclamation fees that are owed. To substantiate the calculated moisture deduction claimed, an operator (or other entity responsible for the payment of the reclamation fee) is required to document by standard laboratory analysis the excess moisture content for each coal seam mined. This documentation must be updated as necessary to establish the continuing validity of the excess moisture content allowance taken by the operator.

Need For and Use: The information submitted will be used by OSM auditors to verify an operator's compliance with Section 402 of the Act and the requirements of the regulation at 30 CFR 870.18, 870.19, and 870.20. During an audit, operators must substantiate how the calculation for excess moisture was determined. Response to this collection of information is required to obtain a benefit and is held confidential under the Freedom of Information Act.

Operators must retain their records for a 6-year period to allow for the audit of tax records. Courts have ruled that the AML fee is an excise tax. The applicable provision of the Energy Policy Act of 1992 (Section 2515) extended the fee through 2004.

Respondents: Approximately 1,050 coal mining operators who take the coal moisture deduction allowance.

Total Annual Burden: OSM estimates that 2 hours will be required to prepare and maintain the documentation for audit purposes per respondent. The total annual burden is estimated to be 2,100 hours.

Executive Order 12988 on Civil Justice Reform

The Department of the Interior has determined that this rule meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

The rule is not considered economically significant under section 3(f)(1) of Executive Order 12866 and will not have a significant economic effect on the coal mining industry, or on regional or national economies. OSM is providing a viable methodology that will enable coal mine operators to calculate the correct allowance for excess moisture. OSM is not attempting to specify any given amount, or percentage, as an excess moisture allowance. For that reason it is not possible to predict the cost that this revision will have in terms of the amount of the additional AML fees that the industry will pay and the government collect or the industry save and the government not collect. Based on AML tonnages reported, and the total moisture allowances taken for 1996, the industry saved approximately $5,729,000 in terms of the tonnage reported. With regard to benefits, the rule revision will ensure that all excess moisture allowances are fair and equitable. OSM's revision also includes an option that will provide operators with a method to calculate an allowance for the inherent moisture present in as-shipped coal. This will be of particular benefit when an operator sells large volumes of coal, and/or sells coal with a substantial variance between the total and inherent moisture.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities for the following reason. The rule will provide two methods for operators to calculate the excess moisture in high-rank coal. OSM expects that most operators of small to medium size mines will likely prefer to continue to use the current method of calculation while operators who either mine a large volume of coal, or mine coal with a significant variance in total and inherent moisture, will use the other option as an alternative to the existing formula used to determine the excess moisture percentage. Thus, for small operators any change from current practices is optional.

Unfunded Mandates Reform Act

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

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) of this rule and has made a Finding of No Significant Impact (FONSI) on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA and FONSI are on file in the OSM Administrative Record.

Author: The principal author of this rule is Dr. Kewal Kohli, Mining Engineer, Office of Surface Mining, U.S. Department of the Interior, 3 Parkway Center, Pittsburgh, PA 15220. Inquiries with respect to the rule should be directed to Dr. Kohli at the address and telephone specified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 30 CFR Part 870

Incorporation by reference, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: July 2, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

Accordingly, 30 CFR part 870 is amended as set forth below:

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

1. The authority citation for part 870 is revised to read as follows:

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

2. Section 870.5 is amended by revising definitions of ''excess moisture,'' ''inherent moisture'' and ''total moisture'' to read as follows:

§ 870.5 Definitions.

* * * * *

Excess moisture means the difference between total moisture and inherent moisture, calculated according to § 870.19 for high-rank coals or the difference between total moisture and inherent moisture calculated according to § 870.20 for low-rank coals.

* * * * *

Inherent moisture means moisture that exists as an integral part of the coal seam in its natural state, including water in pores, but excluding that present in macroscopically visible fractures, as determined according to § 870.19(a) or § 870.20(a).

* * * * *

Total moisture means the measure of weight loss in an air atmosphere under rigidly controlled conditions of temperature, time and air flow, as determined according to either § 870.19(a) or § 870.20(a).

3. Section 870.18 is revised to read as follows:

§ 870.18 General rules for calculating excess moisture.

If you are an operator who mined coal after June 1988, you may deduct the weight of excess moisture in the coal to determine reclamation fees you owe under 30 CFR 870.12(b)(3)(i). Excess moisture is the difference between total moisture and inherent moisture. To calculate excess moisture in HIGH-rank coal, follow § 870.19. To calculate excess moisture in LOW-rank coal, follow § 870.20. Report your calculations on the OSM–1 form, Coal Reclamation Fee Report, for every calendar quarter in which you claim a deduction. Some cautions:

(a) You or your customer may do any test required by §§ 870.19 and 870.20. But whoever does a test, you are to keep test results and all related records for at least six years after the test date.

(b) If OSM disallows any or all of an allowance for excess moisture, you must submit an additional fee plus interest computed according to § 870.15(c) and penalties computed according to § 870.15(f).

(c) The following definitions are applicable to §§ 870.19 and 870.20. ASTM standards D4596–93, *Standard Practice for Collection of Channel Samples of Coal in a Mine;* D5192–91, *Standard Practice for Collection of Coal Samples from Core;* and, D1412–93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C* are incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the **Federal Register**. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC.

(1) *As-shipped coal* means raw or prepared coal that is loaded for shipment from the mine or loading facility.

(2) *Blended coal* means coals of various qualities and predetermined quantities mixed to control the final product.

(3) *Channel sample* means a sample of coal collected according to ASTM standard D4596–93 from a channel extending from the top to the bottom of a coal seam.

(4) *Commingled coal* means coal from different sources and/or types combined prior to shipment or use.

(5) *Core sample* means a cylindrical sample of coal that represents the thickness of a coal seam penetrated by drilling according to ASTM standard D5192–91.

(6) *Correction factor* means the difference between the equilibrium moisture and the inherent moisture in low rank coals for the purpose of § 870.20(a).

(7) *Equilibrium moisture* means the moisture in the coal as determined through ASTM standard D1412–93.

(8) *High-rank coals* means anthracite, bituminous, and subbituminous A and B coals.

(9) *Low-rank coals* means subbituminous C and lignite coals.

(10) *Slurry pond* means any natural or artificial pond or lagoon used for the settlement and draining of the solids from the slurry resulting from the coal washing process.

(11) *Tipple coal* means coal from a mine or loading facility that is ready for shipment.

4. Sections 870.19 and 870.20 are added to read as follows:

§ 870.19 How to calculate excess moisture in HIGH-rank coals.

Here are the requirements for calculating the excess moisture in high-rank coals for a calendar quarter. ASTM standards D2234–89, *Standard Test Methods for Collection of a Gross Sample of Coal;* D3302–91, *Standard Test Method for Total Moisture in Coal;* D5192–91, *Standard Practice for Collection of Coal Samples from Core;* D1412–93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C;* and, D4596–93, *Standard Practice for Collection of Channel Samples of Coal in a Mine* are incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the **Federal Register**. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC.

(a)(1) Calculate the excess moisture percentage using one of these equations:

$$EM = TM - IM$$

or

$$EM = TM - \left(IM \times \frac{100 - TM}{100 - IM} \right)$$

(2) EM equals excess moisture percentage. TM equals total as-shipped moisture percentage calculated according to Table 1 of this section. IM equals inherent moisture percentage calculated according to Table 2 of this section.

(b) Multiply the excess moisture percentage by the tonnage from the bonafide sales, transfers of ownership, or uses by the operator during the quarter.

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Table 1

Calculating TOTAL moisture percentage in HIGH-rank coals [1]

Collect and test each day you ship or use coal ▼	**Convert daily test results to quarterly figures and report them ▼**
Collect a sample of as-shipped or used coal. Follow procedures in ASTM D2234-89. Test the sample for daily total moisture percentage. Follow laboratory procedures in ASTM D3302-91. Obtain prior OSM approval for use of other procedures.	1. Multiply daily total moisture percentage by daily tonnage shipped or used. You now have daily total moisture tonnage. 2. Add up daily total moisture tonnage for the quarter. 3. Add up daily tonnage shipped or used in the quarter. 4. Divide 2 by 3. Report this total moisture percentage in high-rank coal for the quarter on OSM-1, Coal Reclamation Fee Report.

[1] See §870.19 for the incorporation by reference of the ASTM standards.

Table 2

Calculating INHERENT moisture percentage in HIGH-rank coals [1]

Choose from 3 ways to collect and test ▼

First

Collect a core sample[2]. Follow procedures in ASTM D5192-91.

Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93.

Or second

Collect a channel sample. Follow procedures in ASTM D4596-93.

Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93 or ASTM D3302-91.

Or third

Collect a sample of blended coal, as-shipped coal, tipple coal, commingled coal, or coal from slurry ponds. Follow procedures in ASTM D2234-89.

Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93.

Choose from 2 ways to time the tests and convert the results for quarterly reporting ▼

First

Collect and test once each quarter. Report test results for that quarter on OSM-1. Test results need no converting; they are in quarterly units already.

Or second

Create a 24-month baseline and update as follows:

For reporting months 1-24 . . .
Collect and test one sample each month. Each quarter, calculate a weighted average percentage of inherent moisture:

- Multiply a month's inherent moisture percentage by tons produced or shipped. You now have the month's inherent moisture tonnage.
- Add up 3 months of that inherent moisture tonnage.
- Divide by tons produced or shipped in those 3 months.

Report the quarter's weighted average percentage on OSM-1.

For all subsequent months . . .
Collect and test one sample for inherent moisture every 12 months. Calculate—and report in the following 4 quarters—one updated rolling average percentage:

- Add to the annual sample percentage the inherent moisture percentages for the preceding 23 tests.
- Divide by 24.

Report the weighted average percentage on OSM-1.

[1] See §870.19 for the incorporation by reference of the ASTM standards.
[2] Core sampling was approved by the ASTM effective January 1, 1992.

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§ 870.20 How to calculate excess moisture in LOW-rank coals.

Here are the requirements for calculating the excess moisture in low-rank coals for a calendar quarter. ASTM standards D2234–89, *Standard Test Methods for Collection of a Gross Sample of Coal;* D3302–91, *Standard Test Method for Total Moisture in Coal;* and, D1412–93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C* are incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the **Federal Register**. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 120, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC.

(a)(1) Calculate the excess moisture percentage using one of these equations:

$$EM = TM - IM$$

or

$$EM = TM - \left(IM \times \frac{100 - TM}{100 - IM} \right)$$

(2) EM equals excess moisture percentage. TM equals total as-shipped moisture percentage calculated according to Table 1 of this section. IM equals inherent moisture percentage calculated according to Tables 2 and 3 of this section.

(b) Multiply the excess moisture percentage by the tonnage from the bona fide sales, transfers of ownership, or uses by the operator during the quarter.

BILLING CODE 1505-01-D

Table 1

Calculating TOTAL moisture percentage in LOW-rank coals [1]

Collect and test each day you ship or use coal ▼	Convert test results to quarterly figures and report them ▼
Collect a sample of as-shipped or used coal. Follow procedures in ASTM D2234-89. Test the sample for daily total moisture percentage. Follow laboratory procedures in ASTM D3302-91. Obtain prior OSM approval for use of other procedures.	Convert daily total moisture percentage to quarterly total moisture percentage: 1. Multiply daily total moisture percentage by daily tonnage shipped or used. You now have daily total moisture tonnage. 2. Add up daily total moisture tonnage for the quarter. 3. Add up daily tonnage shipped or used in the quarter. 4. Divide 2 by 3. Report this total moisture percentage in low-rank coal for the quarter on OSM-1, Coal Reclamation Fee Report.

[1] See §870.20 for the incorporation by reference of the ASTM standards.

Table 2

Calculating INHERENT moisture percentage in LOW-rank coals [1]

Collect and test once a month ▼

Collect 1 sample of as-shipped coal. Follow procedures in ASTM D2234-89.

Test the sample for equilibrium moisture. Follow laboratory procedures in ASTM D1412-93.

Convert test results to quarterly figures and report them ▼

Calculate inherent moisture percentage for the quarter:

- Average the 3 equilibrium moisture results from your monthly tests.
- Add to this average a **Correction Factor** that you calculate for the first quarter according to Table 3 below.

Report this inherent moisture percentage for the quarter on OSM-1.

[1] See §870.20 for the incorporation by reference of the ASTM standards.

Table 3

Calculating the Correction Factor for Table 2 [1]

Collect and test in the first quarter a deduction is taken ▼	Convert test results into a correction factor for all quarterly reports ▼
Collect 15 samples that are representative of the entire seam from a freshly exposed, unweathered coal seam face. Follow procedures in ASTM D1412-93 Appendix X1.	Use the test results to calculate a correction factor: • Average the 15 inherent moisture results from your tests. • Average the 15 equilibrium moisture results from your tests. • Subtract the average equilibrium moisture from the average inherent moisture.
Test each sample for two things: • Inherent moisture • Equilibrium moisture. Follow laboratory procedures in ASTM D1412-93 Appendix X1.	You now have a correction factor for the first quarter the deduction is taken, and all later quarters. Use it in Table 2 above. You may change the correction factor at any time by repeating the steps in this table. A correction factor applies to only the bench you sample. If you mine multiple benches or seams simultaneously, you may combine the sample results from the different benches or seams to calculate an average correction factor. You may update the correction factor by repeating the procedures or incorporating new test results with the initial result.

[1] See §870.20 for the incorporation by reference of the ASTM standards.

Editorial Note: FR Doc. 97–22903 was originally published as Part II in the issue of Tuesday, August 29, 1997. The corrected document is republished in its entirety at the request of the agency, due to the omission of the Table numbers.

[FR Doc. 97–22903 Filed 8–28–97; 8:45 am]

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Federal Register

Thursday
November 6, 1997

Part V

The President

Proclamation 7048—National Adoption Month, 1997

Federal Register
Vol. 62, No. 215
Thursday, November 6, 1997

Presidential Documents

Title 3—

The President

Proclamation 7048 of November 3, 1997

National Adoption Month, 1997

By the President of the United States

A Proclamation

Most American children are blessed with loving, stable families. But, tragically, in our country today there are too many children whose parents are unwilling or unable to care for them. While foster care offers these children a safe and nurturing temporary haven in their time of greatest need, as many as 100,000 foster care kids will need permanent homes in the next few years. Many of these children have special needs and require the security and stability of an adoptive family to develop their full potential. Adoption allows these and other children to have the permanent homes they deserve, and it enables many dedicated adults to experience the joys and rewards of parenting.

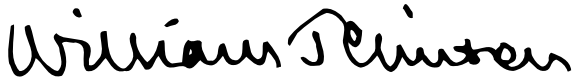
My Administration is working hard to find ways to help encourage adoption. On December 14, 1996, I issued a Memorandum to the Secretaries of Health and Human Services, the Treasury, Labor, and Commerce and to the Director of the Office of Personnel Management, directing them to promote efforts to both increase the number of children who are adopted or permanently placed each year and to move children more rapidly from foster care to permanent homes. I also urged them to increase public awareness about the children waiting for permanent families and to encourage all Americans to consider the rewards of adoption.

I challenged the members of my Administration to work with States, communities, and civic leaders to create a plan for doubling the number of adoptions and permanent placements for children to 54,000 by the year 2002. And on February 14, 1997, the *Adoption 2002* report, outlining changes in policies and practices necessary to reach this goal, was released. Since then, we have been actively implementing the recommendations included in the report, and States are reviewing data and submitting numerical targets for adoption and guardianships to be completed by the year 2002. The Office of Personnel Management has published a guide for Federal workers interested in adopting, and the Department of Health and Human Services is preparing to make the first annual Adoption 2002 Excellence awards later this year. Finally, the Congress is considering historic legislation that would provide the resources and statutory authority for financial incentives, technical assistance, and improved judicial decision-making for children in foster care.

As a Nation, we have before us an opportunity to make a real difference in the lives of our most vulnerable children. We must continue to promote public awareness of the need for adoptive families and to help families make the choice to provide loving, permanent homes for the many children who otherwise must continue to wait. We must also strengthen our support of those families who do choose to adopt. As we observe National Adoption Month, we reaffirm our commitment to adoption as a new beginning for thousands of children, and we celebrate the many American families who have embraced these children by accepting the rewards and responsibilities of adoption.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1997 as National Adoption Month. I urge all Americans to observe this month with appropriate programs and activities to honor adoptive families and to participate in efforts to find permanent homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.



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  - BE-93 annual survey of royalties, license fees, and other receipts and payments for intangible rights between U.S. and unaffiliated foreign persons; comments due by 11-10-97; published 9-26-97

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