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Federal Register

Tuesday
November 24, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Denver, CO, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

DENVER, CO

WHEN: December 15; at 9 a.m.
WHERE: Room 239, Federal Building, 1961 Stout Street, Denver, CO.
RESERVATIONS: Call the Denver Federal Information Center, 303–564–6575

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Presidential Documents

Title 3—

The President

Proclamation 5747 of November 19, 1987

National Family Week, 1987

By the President of the United States of America

A Proclamation

The destiny of America is shaped not only by events within the councils of government, industry, and finance, but also by the hand of God and the life and the love in each and every home in our Nation. America's families are a tremendous source of strength and faith and freedom for our children and our country, and during National Family Week we recognize this truth and pay glad tribute to the families of our land.

The family is a source of well-being, a place to give and receive love and to learn and live our traditions and the virtues and the values of responsibility, selflessness and self-reliance, loyalty, mutual respect, fairness, and the power of faith. In families we also come to know our inherent dignity and worth as individuals and to enjoy the God-given rights that are the basis of freedom.

We must remember during National Family Week, and especially during the Bicentennial of the Constitution, that freedom, the family, and the individual have everything to do with each other. That is a truth that the Founders of our country knew well. The more the integrity of the family is fostered—the more social and public policy influences that weaken the family are eliminated—the stronger is freedom and the healthier is society. Let us forever remember this personally and as a people, for the good of our families and the good of our country.

The Congress, by Public Law 100–166, has authorized and requested the President to proclaim the week of November 22 through November 28, 1987, as "National Family Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 22 through 28, 1987, as National Family Week. I invite the Governors of the several States, the chief officials of local governments, and all Americans to celebrate this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of November, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87–27173
Filed 11–20–87; 4:11 pm]
Billing code 3195–01–M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

Procedure for the Conduct of Referenda in Connection with Marketing Orders for Eggs and Spent Fowl

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: A rule establishing a procedure for the conduct of referenda on marketing orders for eggs, spent fowl, and their products was published in the **Federal Register** on April 24, 1987. The rule was developed for a proposed egg marketing order on which producers voted in a referendum May 25–June 19, 1987. The requisite number of producers voting and the volume of production represented by producers voting failed to approve the egg marketing order. The proceeding on the egg marketing order was subsequently terminated on August 10, 1987. Therefore, the procedure for conduct of referenda is no longer needed and is removed from the regulations.

EFFECTIVE DATE: November 24, 1987.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Poultry Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456. Phone (202) 382–8132.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1521–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant impact on a substantial number of small entities because the rule removes from the regulations procedures to conduct referenda that are no longer necessary.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) authorizes the development of marketing agreements and marketing orders for eggs, spent fowl, and products thereof. The Act further requires that a referendum be held to determine whether affected producers approve or favor any such order. Accordingly, procedures to be followed in conducting an initial referendum as well as any subsequent referenda were necessary to meet the requirements of the Act.

Notice of proposed rulemaking on a procedure for the conduct of referenda in connection with marketing orders for eggs and spent fowl was published in the **Federal Register** on February 2, 1987 (52 FR 3119), followed by issuance of the final rule on April 24, 1987 (52 FR 13630).

Certain provisions of the rule were developed to conform with those of the proposed egg marketing order. Inasmuch as producers failed to approve the marketing order in a referendum conducted May 25–June 19, 1987, and rulemaking proceedings on the proposed order were subsequently terminated on August 10, 1987 (52 FR 29531), the need for a referenda procedure no longer exists.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of Management and Budget (OMB) has discontinued the information collection approval (OMB Control No. 0581–0155).

Pursuant to 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because in view of the August 10, 1987, termination of the rulemaking proceedings for the proposed egg marketing order, the need for a referenda procedure no longer exists.

List of Subjects in 7 CFR Part 900

Marketing agreement and order, Eggs.

PART 900—[AMENDED]

1. The authority citation for 7 CFR Part 900 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Procedure for the Conduct of Referenda in Connection with Marketing Orders for Eggs and Spent Fowl Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended—[Removed]

§§ 900.700 through 900.707 [Removed]

2. Accordingly, for the reasons set forth in the preamble, §§ 900.700–900.707 of 7 CFR Part 900 are removed.

Signed at Washington, DC, on November 17, 1987.

J. Patrick Boyle,
Administrator.

[FR Doc. 87–27030 Filed 11–23–87; 8:45 am]
BILLING CODE 3410–02–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 624

Farm Credit System Regulatory Accounting Practices—Temporary Regulations; Loan Policies and Operations—Loss Sharing Agreements; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) is correcting errors in the final rule which amended provisions of Parts 614 and 624 relating to the use of regulatory accounting practices (RAP) by Farm Credit System (System) institutions and to a regulation relating to, among other things, the reversal of previously accrued financial assistance under System loss-sharing agreements. The final rule appeared in the **Federal Register** on November 16, 1987 (52 FR 43733).

FOR FURTHER INFORMATION CONTACT: Thomas Dalton, Financial and Analysis Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020.

SUPPLEMENTARY INFORMATION: A technical correction is made to amendatory instruction No. 1 (52 FR 43740, November 16, 1987) to reflect additional authority citation for § 614.4341 of Part 614.

In typesetting the final rule published November 16, 1987, at page 52 FR 43741, column 2, paragraph (b) of § 624.113,

following the word "with" in line 8, the text "§ 624.103, and each Federal land bank association that is using RAP to pass through the use of RAP by the district Federal land bank in accordance with" was inadvertently omitted.

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 is corrected as follows:

Authority: 12 U.S.C. 2183, 2199, 2202, 2243, 2244, 2252(a)(10).

Section 614.4341 also issued under 12 U.S.C. 2012(22), 2053, 2027(18), 2093(15), 2122(18), 2216G, 2252(a)(10).

PART 624—FARM CREDIT SYSTEM REGULATORY ACCOUNTING PRACTICES: TEMPORARY REGULATIONS

2. Section 624.113, the introductory text of paragraph (b) is corrected to read as follows:

§ 624.113 Financial reporting and disclosure.

* * * * *

(b) Each Federal land bank, bank for cooperatives, and the Central Bank for Cooperatives that is deferring its provision for loan losses in accordance with §§ 624.103 and 624.111(b), each production credit association that is deferring its provision for loan losses in accordance with § 624.103, and each Federal land bank association that is using RAP to pass through the use of RAP by the district Federal land bank in accordance with § 624.104 shall comply with the requirements of this paragraph.

Dated: November 19, 1987.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-27045 Filed 11-23-87; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Reg. Nos. 4 and 16]

Social Security Benefits and Supplemental Security Income; Cross-Reference Corrections

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are amending the regulations at § 404.1594(f)(7) of Regulations No. 4 and §§ 416.994(b)(5)(vii) and 416.1161(b) of Regulations No. 16 to change incorrect cross-references.

EFFECTIVE DATE: The amendments to §§ 404.1594, 416.994 and 416.1161 are being issued as a final rule and are effective November 24, 1987. We will consider any comments on the final rule amending the regulations at §§ 404.1594(f)(7), 416.994(b)(5)(vii) and 416.1161(b) that are received on or before January 25, 1988, and will revise such rule if public comment warrants.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7463.

SUPPLEMENTARY INFORMATION: In our current regulations at § 404.1594(f)(7), we inadvertently cross-referred to "§§ 404.1560 through 404.1569" on lines 4 and 5. In paragraph (b)(5)(vii) of § 416.994, we also inadvertently cross-referred to "§ 416.960 through 416.969" on lines 4 and 5. We are amending these sections to change the cross-references to read §§ 404.1561 and 416.961 respectively.

In paragraph (b) of § 416.1161 of Regulations No. 16, on lines 7 through 9, we inadvertently described and stated an incorrect cross-reference. We are amending this section to read "support and maintenance assistance described in § 416.1157(c)" instead of "home energy assistance described in §§ 416.1155 and 416.1156".

The Department generally follows the Notice of Proposed Rulemaking and public comment procedures specified in section 553(b)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)) in the development of its regulations. The APA provides an exception to the notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of proposed rulemaking and public comment procedures on this final rule because we are only making minor technical corrections which will not affect an individual's rights under either title II or title XVI. Thus, an opportunity for prior public comment is unnecessary, and this rule is being issued as a final rule. It will be effective on the date it is published in the **Federal Register.**

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation will not result in any program or administrative cost, or otherwise meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only corrects cross-references. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation imposes no additional reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program No. 13.802, Social Security Disability Insurance; No. 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, Survivors and Disability insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental security income.

Dated: September 22, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: October 23, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart P of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart P of Part 404 continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

§ 404.1594 [Amended]

2. Section 404.1594, paragraph (f)(7) is amended by removing the cross-reference "§§ 404.1560 through 404.1569" and inserting "§ 404.1561".

PART 416—[AMENDED]

3. The authority citation for Subpart I of Part 416 continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

§ 416.994 [Amended]

4. Section 416.994, paragraph (b)(5)(vii) is amended by removing the cross-reference "§§ 416.960 through 416.969" and inserting "§ 416.961".

5. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154; sec. 2639 of Pub. L. 98–369, 98 Stat. 1144.

§ 416.1161 [Amended]

6. Section 416.1161, paragraph (b) is amended by removing "home energy assistance described in §§ 416.1155 and 416.1156" and inserting "support and maintenance assistance described in § 416.1157(c)".

[FR Doc. 87–27020 Filed 11–23–87; 8:45 am]
BILLING CODE 4190–11–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Matters

28 CFR Part 0

[A.G. Order 1237–87]

Organization of the Department of Justice Executive Office for Immigration Matters

AGENCY: Executive Office for Immigration Matters, Department of Justice.

ACTION: Final rule.

SUMMARY: The name of the Executive Office for Immigration Review is hereby changed to Executive Office for Immigration Matters. To assist in the implementation of the Immigration Reform and Control Act of 1986, the Office of Chief Administrative Hearing Officer has been established and placed within the Executive Office for Immigration Matters. The Chief Administrative Hearing Officer has the authority to generally supervise Administrative Law Judges in their duties of adjudicating cases under 8 U.S.C. 1324 A and B. Also, certain changes in terminology have been made to reflect current word usage.

EFFECTIVE DATE: November 24, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Matters, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 756–6470.

SUPPLEMENTARY INFORMATION: The name of the Executive Office for Immigration Review is hereby changed to Executive Office for Immigration Matters. This is being done to more accurately reflect the broader mission and increase responsibilities of the agency. Sections 101 and 102 of the Immigration Reform and Control Act of 1986 require that Administrative Law Judges preside over hearings involving allegations of unlawful employment of aliens and unfair immigration-related employment practices. To implement these provisions, the Department of Justice has created the position of Chief Administrative Hearing Officer who will be responsible for generally supervising the Administrative Law Judge Program under the direction of the Director, Executive Office for Immigration Matters. Also, the seldom used term "Chief Special Inquiry Officer" and "Special Inquiry Officer" have been changed to "Chief Immigration Judge" and "Immigration Judge" to reflect current terminology. Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary, as this rule relates to agency management and organization.

This is not a major rule within the meaning of section 1(b) of Executive Order 12291. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 0

Government employees, Organization and functions (Government agencies), Authority delegations (Government agencies).

Accordingly, Chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION MATTERS; IMMIGRATION MATTERS

1. The authority citation for Part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2554, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108; 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.105 is amended by revising paragraph (a) to read as follows:

§ 0.105 General functions.

* * * * *

(a) Subject to limitations contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) and excepting the authority delegated to the Executive Office for Immigration Matters, the Board of Immigration Appeals, the Office of the Chief Immigration Judge, Immigration Judges, and the Office of the Chief Administrative Hearing Officer, administer and enforce the Immigration and Nationality Act and all other laws relating to immigration (including but not limited to admission, exclusion, and deportation), naturalization, and nationality. Nothing in this paragraph shall be construed to authorize the Commissioner of Immigration and Naturalization to supervise the litigation of or to approve the filing of records on review, appeals, or petitions for writs of certiorari or to intervene or have independent representation in cases under the immigration and nationality laws except as provided in paragraph (e) of this section.

* * * * *

3. Subpart U is revised to read as follows:

Subpart U—Executive Office for Immigration Matters

Sec.

Subpart U—Executive Office for Immigration Matters

§ 0.115 General functions.

The Executive Office for Immigration Matters shall be headed by a Director, who shall be responsible for the general supervision of the Board of Immigration Appeals, the Office of the Chief Immigration Judge, and the Office of the Chief Administrative Hearing Officer in the execution of their duties.

The Director may redelegate the authority delegated to him by the Attorney General to the Chairman of the Board of Immigration Appeals, the Office of the Chief Immigration Judge, or the Office of the Chief Administrative Hearing Officer.

§ 0.116 Board of Immigration Appeals.

The Board of Immigration Appeals shall consist of a Chairman and four other members. The Chairman shall be responsible for providing supervision and establishing internal operating procedures of the Board in the exercise of its authorities and responsibilities as delineated in 8 CFR 3.1 through 3.8.

§ 0.117 Office of Chief Immigration Judge.

The Chief Immigration Judge shall provide general supervision to the Immigration Judges in performance of their duties in accordance with the Immigration and Nationality Act, 8 U.S.C. 1226 and 1252 and 8 CFR 3.9.

§ 0.118 Office of Chief Administrative Hearing Officer.

The Chief Administrative Hearing Officer shall provide general supervision to the Administrative Law Judges in performance of their duties in accordance with 8 U.S.C. 1324 A and B.

Date: November 13, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-27013 Filed 11-19-87; 3:10 pm]

BILLING CODE 4410-01-M

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28 CFR Part 68

[A.G. Order 1236-87]

Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair Immigration-Related Employment Practices

AGENCY: Executive Office for Immigration Matters, Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: These regulations will establish procedures for implementation of sections 274A and 274B of the Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986.

Specifically, these regulations will add a new Part 66 which will provide the rules of practice and procedure in administrative hearings regarding:

(1) Allegations of unlawful hiring, recruiting or referring for a fee, for employment, in the United States of aliens knowing that the aliens are not authorized to work in the United States, or the continued employment of aliens in the United States knowing the aliens are (or have become) unauthorized to work in the United States, or failure to comply with the employment verification requirements;

(2) Allegations of unfair immigration-related employment practices; or

(3) Allegations of the unlawful imposition of any requirement that an individual post bond, security, or otherwise guarantee or indemnify against potential liability for unlawful hiring, recruiting or referring of such individual.

DATES: *Effective Date:* November 24, 1987, pursuant to 5 U.S.C. 553(d).

Comment Date: Although not required under the Administrative Procedure Act for the promulgation of rules of agency procedure or practice, written comments will be considered if received no later than December 24, 1987.

ADDRESSES: Please submit written comments in duplicate to the Office of the Director, Executive Office for Immigration Matters, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041.

Complaints may be submitted immediately to the Chief Administrative Hearing Officer, 5113 Leesburg Pike, Skyline Building 4, Suite 310, Falls Church, Virginia 22041. Such complaints will be accepted if timely under any applicable provision of the Immigration and Nationality Act, as amended.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Matters, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, (703) 756-6470.

SUPPLEMENTARY INFORMATION: Sections 101 and 102 of the Immigration Reform and Control Act of 1986 require that hearings be held by Administrative Law Judges in certain cases involving allegations of knowing hiring, recruiting or referring for a fee, for employment, in the United States, unauthorized aliens, or continuing to employ aliens not authorized to work in the United States, or failure to comply with the employment verification requirements and in situations where unfair immigration-related employment practices are alleged. To implement these provisions properly, it is necessary to designate hearing procedures to guide in the conduct of these proceedings. The following regulations provide a set of rules for all cases properly brought before the Administrative Law Judges which comply with the requirements of the Immigration Reform and Control Act of 1986.

The Administrative Law Judges will act as independent adjudicators and will be under the general direction of the Executive Office for Immigration Matters within the Department of Justice. They will be supervised for administrative purposes by a Chief Administrative Hearing Officer who, under the direction of the Director of the Executive Office for Immigration Matters, will administer the Administrative Law Judge program.

These rules of procedure provide for responsive pleadings with complaints lodged with the Office of the Chief Administrative Hearing Officer and answers to follow. Time limits are set for the various pleadings. Also provided, at the discretion of the Administrative Law Judge, are prehearing statements and conferences designed to streamline the proceedings, for example, by narrowing the issues, arriving at stipulations, exchanging proposed exhibits, or engaging in other prehearing matters as appropriate.

A discovery process is set forth which is designed to assist the Administrative Law Judge and the parties in the development of the facts and a complete record. The Immigration Reform and Control Act of 1986 provides the Administrative Law Judge with subpoena powers and includes a provision that a subpoena may be enforced in the appropriate federal district court.

Representation by any licensed attorney in good standing is allowed in all cases or an individual may appear pro se. The rules also provide for intervention by the Special Counsel for Immigration-Related Unfair Employment Practices (Special Counsel) in cases involving unfair immigration-related employment practices. In unfair immigration-related employment cases, any person who believes that he or she has been adversely affected directly by an unfair immigration-related employment practice, or any individual or private organization authorized in writing to act on such person's behalf, may petition the Administrative Law

Judge to intervene, or appear under certain circumstances. Intervenors as parties, and amicus curiae are also permitted under certain circumstances.

The actual mechanics of the hearing are set forth, including rules of evidence. A verbatim written record is to be kept of the proceedings. After the close of the hearing, the Administrative Law Judge will have the full authority to make appropriate awards, grant relief, and issue other appropriate orders as provided by statute.

In cases involving knowing hiring, recruiting or referring for a fee, for employment, in the United States of aliens not authorized to work in the United States, the failure to comply with the employment verification requirements, and prohibition of indemnity bond cases, the Administrative Law Judge's decision may be reviewed by the Chief Administrative Hearing Officer. This official has no review authority over other immigration-related matters and will have the authority to vacate or modify the decision. Thereafter, judicial review is available. Failure to request that the Chief Administrative Hearing Officer review a decision by the Administrative Law Judge shall not prevent a party from seeking judicial review. In cases involving unfair immigration-related employment practices, only judicial review is available. Recourse to the Chief Administrative Hearing Officer is not available.

On March 23, 1987, a proposed rule pertaining to the functions of the Special Counsel was issued (see 52 FR 9274 et seq. (March 23, 1987)) to establish standards and procedures for the enforcement of section 102 of the Immigration Reform and Control Act of 1986 which prohibits certain unfair immigration-related employment practices. Because that proposed rule contained provisions with respect to proceedings before Administrative Law Judges which overlap provisions of the rule being established herein, it has been decided that in order to avoid duplication, the overlapping provisions will be dropped from the aforementioned rule proposed at 52 FR 9274 et seq. (March 23, 1987). Specifically, those sections of the rule proposed in 52 FR 9274 et seq. containing procedures relating to the conduct of administrative enforcement proceedings (Sections 44.306, 44.307, 44.308, 44.309, 44.310) will be deleted from the final rule pertaining to the functions of the Special Counsel. In developing the rule established herein, the Executive Office for Immigration Matters had the benefit of comments received on the rule previously published at 52 FR 9274 et seq. By issuing this rule as an interim final rule with opportunity for comment, the public will be given another chance to comment on the procedures that will be used to conduct hearings and, at the same time, the Department will have in place a functioning set of procedures so that there will be no delay in enforcing sections 101 and 102 of the Immigration Reform and Control Act of 1986.

By the promulgation of these rules of procedure, the hearing provisions under sections 101 and 102 will be properly implemented. All parties will be provided a full and fair opportunity to be heard and an impartial independent adjudication of their cases.

This rule is not a major rule within the meaning of Executive Order 12291. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities because it is procedural in nature.

The Executive Office for Immigration Matters invites public comments during the thirty (30) days immediately following the effective date.

List of Subjects in 28 CFR Part 68

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Nationality, Non-Discrimination.

Accordingly, Chapter 1 of Title 28 of the Code of Federal Regulations is amended as follows:

Part 68 is added to 28 CFR chapter I to read as follows:

PART 68—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS AND UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

Sec.

Authority: 5 U.S.C. 301; 5 U.S.C. 554; 8 U.S.C. 1103; 8 U.S.C. 1324a and b.

§ 68.1 Scope of rules.

These rules of practice are generally applicable to adjudicatory proceedings before Administrative Law Judges of the Executive Office for Immigration Matters, United States Department of Justice, with regard to unlawful employment cases and unfair immigration-related employment practice cases under 8 U.S.C. 1324a and b. Such proceedings shall be conducted expeditiously and the parties shall make every effort at each stage of a proceeding to avoid delay. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter is controlling. The Rules of Civil Procedure for the District Courts of the United States shall be applied in any situation not provided for

or controlled by these rules, or by any statute, executive order, or regulation.

§ 68.2 Definitions.

For purposes of these rules:

(a) "Adjudicatory proceeding" means a judicial-type proceeding leading to the formulation of a final order;

(b) "Administrative Law Judge" means an Administrative Law Judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) "Administrative Procedure Act" means those provisions of the Administrative Procedure Act, as codified, which are contained in 5 U.S.C. 551 through 559;

(d) "Chief Administrative Hearing Officer" is the official who, under the direction of the Director, Executive Office for Immigration Matters, generally administers the Administrative Law Judge program, supervises the Administrative Law Judges in the performance of their duties in accordance with 8 U.S.C. 1324a and b, and who, in accordance with 8 U.S.C. 1324a and § 68.52 exercises authority to review, modify or vacate the orders of Administrative Law Judges in cases involving unlawful hiring, recruiting or referring for employment of certain aliens, and unlawful continued employment or failure to comply with requirements for employment verification, and prohibition of indemnity bond cases. The Chief Administrative Hearing Officer has no review authority over cases arising under 8 U.S.C. 1324b involving unfair immigration-related employment practice cases;

(e) "Commencement of Proceeding" is the filing of a complaint with the Office of the Chief Administrative Hearing Officer;

(f) "Complainant" means the Immigration and Naturalization Service (INS) in cases arising under 8 U.S.C. 1324a. In cases arising under 8 U.S.C. 1324b, "complainant" means the Special Counsel (as defined in § 68.2(o)) or, in private actions, an individual or private organization;

(g) "Complaint" means the formal document initiating an adjudicatory proceeding. A complaint format will be prescribed by the Office of the Chief Administrative Hearing Officer to be used in all cases. (See § 68.4 for content of pleadings.) Complaints shall be completed by complainants or their counsel;

(h) "Consent Order" means any written document containing a specified remedy or other relief agreed to by all parties and entered as an Order by the Administrative Law Judge;

(i) "Hearing" means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission;

(j) "Motion" means an oral or written request, made by a person or party, for some action by an Administrative Law Judge;

(k) "Order" means the whole or any part of a final procedural or substantive disposition of a matter by the Administrative Law Judge;

(l) "Party" includes all persons or entities named or admitted as a complainant, respondent, or intervenor in a proceeding, and also includes, in unfair immigration-related employment practice cases, the person or entity who has filed a charge with the Special Counsel;

(m) "Pleading" means the complaint, motions, requests for discovery, the answer thereto, any supplement or amendment thereto, and reply that may be permitted to any answer, supplement or amendment, or any correspondence or comments submitted to the Administrative Law Judge by a party;

(n) "Respondent" means a party to an adjudicatory proceeding against whom findings may be made or who may be required to provide relief or take remedial action;

(o) "Special Counsel" means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under section 102 of the Immigration Reform and Control Act of 1986, or his or her designee;

(p) "Unlawful Employment Cases" means cases involving the knowing hiring, recruiting or referring for a fee, or continued employment of certain aliens and cases involving failure to comply with verification requirements in violation of 8 U.S.C. 1324a;

(q) "Unfair Immigration-Related Employment Practice Cases" means cases involving discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment, or the discharging of the individual from employment:

(1) Because of such individual's national origin, or

(2) In the case of a citizen or intending citizen, because of the individual's citizenship status, in violation of 8 U.S.C. 1324b.

(r) "Prohibition of Indemnity Bond Cases" means cases where a person or entity unlawfully requires, as a condition to the hiring, recruiting or referring (for a fee) of an individual for employment in the United States, that the individual post a bond or otherwise: provide a financial guarantee or indemnify for potential liability as a result of the hiring, recruiting, or referring of the individual.

§ 68.3 Service and filing of documents.

(a) *Generally.* An original and two copies of the complaint shall be filed with the Office of the Chief Administrative Hearing Officer. An original and one copy of all other pleadings shall be filed with the Office of the Chief Administrative Hearing Officer by the parties presenting the pleadings until an Administrative Law Judge is assigned to a case. Thereafter, all pleadings shall be delivered or mailed to the Administrative Law Judge assigned to the case and to all other parties of record. Each pleading filed shall be clear and legible.

(b) *By parties.* All pleadings shall be filed with the Office of the Chief Administrative Hearing Officer or appropriate Administrative Law Judge assigned to the case with a copy, including any attachment, to each of the other parties of record. Original complaints shall be served by the Chief Administrative Hearing Officer in accordance with § 68.3(d). When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of the Chief Administrative Hearing Officer or Administrative Law Judges.* Service of notices, orders and decisions shall be made by regular mail to the last known address of the parties or, if the parties are represented by an attorney, to the attorney.

(d) *Service of complaint and Notice of Hearing.* Service of complaint and notice of the date set for hearing shall be made by the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge to whom the complaint is assigned either:

(1) By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney of record of a party; or

(2) By leaving a copy at the principal office, place of business, or residence of a party; or

(3) By mailing to the last known address of such individual, partner, officer, or attorney. Service is complete upon receipt by addressee.

§ 68.4 Content of pleadings.

(a) Every pleading shall contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by the Office of the Chief Administrative Hearing Officer, the names of all parties (or after the complaint, at least the first party named as a complainant or respondent), and a designation of the type of pleading or paper (e.g., complaint, motion to dismiss, etc.). The pleading shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for pleadings, except for the complaint which shall be in the format prescribed by the Chief Administrative Hearing Officer, they should be typewritten when possible on standard size (8½ x 11) paper. Legal size (8½ x 14) paper will not be accepted, except with the Administrative Law Judge's permission.

(b) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process, provided all copies are clear and legible.

(c) All documents presented by a party in a proceeding must be in the English language or, if in a foreign language, accompanied by a certified translation.

§ 68.5 Time computations.

(a) *Generally.* In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is Saturday, Sunday, or legal holiday observed by the Federal Government in which case the time period includes the next business day. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) *Date of entry of orders.* In computing any period of time involving the date of the entry of an order, the date of entry shall be the date the order is entered.

(c) *Computation of time for filing by mail.* Pleadings are not deemed filed until received by the Office of the Chief Administrative Hearing Officer or Administrative Law Judge assigned to the case. However, when pleadings are filed by mail, five (5) days shall be added to the prescribed period.

(d) *Computation of time for service by mail.*

(1) Service of all pleadings other than complaints is deemed effective at the time of mailing; and

(2) Whenever a party has the right or is required to take some action within a prescribed period after the service of a pleading, notice, or other document upon said party, and the pleading, notice, or document is served upon said party by mail, five (5) days shall be added to the prescribed period.

§ 68.6 Responsive pleadings—answer.

(a) *Time for answer.* Within thirty (30) days after the service of a complaint, each respondent shall file an answer.

(b) *Default.* Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.

(c) *Answer.* Any respondent contesting any material fact alleged in a complaint, or contending that the amount of a proposed penalty or award is excessive or inappropriate, or contending that he/she is entitled to judgment as a matter of law, shall file an answer in writing. The answer shall include:

(1) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation; a statement of lack of information shall have the effect of a denial; any allegation not expressly denied shall be deemed to be admitted; and

(2) A statement of the facts supporting each affirmative defense.

(d) Complainants may file a reply responding to each affirmative defense asserted.

(e) *Amendments and supplemental pleadings.* If and whenever a determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the Administrative Law Judge's final order based on the complaint. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make the pleading conform to the evidence. The Administrative Law Judge may, upon reasonable notice and such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events which have happened or new law promulgated since the date of the pleadings and which are relevant to any of the issues involved.

§ 68.7 Motions and requests.

(a) *Generally.* Any application for an order or any other request shall be made by motion which shall be made in writing unless the Administrative Law Judge in the course of an oral hearing consents to accept such motion orally, and which shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions or requests made during the course of any oral hearing or appearance before an Administrative Law Judge shall be stated orally and made part of the transcript. Whether a motion is made orally or in writing, all parties shall be given reasonable opportunity to respond or to object to the motion or request.

(b) *Answers to motions.* Within ten (10) days after a written motion is served, or within such other period as the Administrative Law Judge may fix, any party to the proceeding may file an answer in support of, or in opposition to, the motion, accompanied by such affidavits or other evidence as he/she desires to rely upon. Unless the Administrative Law Judge provides otherwise, no reply to an answer, response to a reply, or any further responsive document shall be filed.

(c) *Oral arguments or briefs.* No oral argument will be heard on motions unless the Administrative Law Judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

§ 68.8 Prehearing statements.

(a) At any time prior to the commencement of the hearing, the Administrative Law Judge may order any party to file a prehearing statement of position.

(b) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and shall briefly set forth the following matters, unless otherwise ordered by the Administrative Law Judge:

(1) Issues involved in the proceedings;

(2) Facts stipulated to together with a statement that the party or parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible;

(3) Facts in dispute;

(4) Witnesses, except to the extent that disclosure would be privileged, and exhibits by which disputed facts will be litigated;

(5) A brief statement of applicable law;

(6) The conclusions to be drawn;

(7) The estimated time required for presentation of the party's or parties' case; and

(8) Any appropriate comments, suggestions, or information which might assist the parties or the Administrative Law Judge in preparing for the hearing or otherwise aid in the disposition of the proceeding.

§ 68.9 Conferences.

(a) *Purpose and scope.*

(1) Upon motion of a party or in the Administrative Law Judge's discretion, the judge may direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing, or in a conference during the course of the hearing, when the Administrative Law Judge finds that the proceeding would be expedited by such a conference. Prehearing conferences normally shall be conducted by conference telephonic communication unless, in the opinion of the Administrative Law Judge, such method would be impractical, or when such conferences can be conducted in a more expeditious or effective manner by correspondence or personal appearance. Reasonable notice of the time, place, and manner of the prehearing conference shall be given.

(2) At the conference, the following matters may be considered:

(i) The simplification of issues;

(ii) The necessity of amendments to pleadings;

(iii) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(iv) The limitations on the number of expert or other witnesses;

(v) Negotiation, compromise, or settlement of issues;

(vi) The exchange of copies of proposed exhibits;

(vii) The identification of documents or matters of which official notice may be requested;

(viii) A schedule to be followed by the parties for completion of the actions decided at the conference; and

(ix) Such other matters, including the disposition of pending motions, as may expedite and aid in the disposition of the proceeding.

(b) *Reporting.* A verbatim record of the conference will not be kept unless directed by the Administrative Law Judge.

(c) *Order.* Actions taken as a result of a conference shall be reduced to a written order, unless the Administrative Law Judge concludes that a stenographic report shall suffice, or, if the conference takes place within seven (7) days of the beginning of the hearing, the Administrative Law Judge elects to make a statement on the record at the hearing summarizing the actions taken.

§ 68.10 Consent order or settlement.

(a) *Generally.* At any time after the commencement of a proceeding, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of reaching an agreement which will result in a just disposition of the issue involved. The Administrative Law Judge may require the parties to submit progress reports on a regular basis as to the status of negotiations.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint, order of reference, or notice of administrative determination (or amended notice, if one is filed), as appropriate, and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order for consideration by the Administrative Law Judge; or

(2) Notify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action; or

(3) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted, the Administrative Law Judge, within thirty (30) days or as soon as practicable thereafter, may, if satisfied with its timeliness, form, and substance, accept such agreement by issuing a decision based upon the agreed findings. In his or her discretion, the Administrative Law Judge may conduct a hearing to determine the fairness of the agreement, consent findings, and proposed order.

§ 68.11 Intervenor in unfair immigration-related employment cases.

(a) Any interested person or private organization, other than an officer of the Immigration and Naturalization Service, may petition to intervene as a party in unfair immigration-related employment cases. The Administrative Law Judge may, in his or her discretion, grant such a petition, if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and is likely to contribute materially to the proper disposition of the proceedings.

(b) The Special Counsel may intervene as a matter of right at any time.

§ 68.12 Consolidation of hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Administrative Law Judge assigned may, upon motion by any party, or on his or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings may be made and the evidence introduced in one matter may be considered as introduced in the others, and a separate or joint decision shall be made at the discretion of the Administrative Law Judge.

§ 68.13 Amicus curiae.

A brief of an amicus curiae may be filed by leave of the Administative Law Judge upon motion or petition of the amicus curiae. The amicus curiae shall not participate in any way in the conduct of the hearing, including the presentation of evidence and the examination of witnesses.

§ 68.14 Discovery—General provisions.

(a) *General.* Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things, or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. Unless the Administrative Law Judge orders

otherwise, the frequency or sequence of these methods is not limited.

(b) *Scope of discovery.* Unless otherwise limited by order of the Administrative Law Judge in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter.

(c) *Protective orders.* Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the Administrative Law Judge may make any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time, amount, duration, or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters; or

(5) Discovery be conducted with no one present except persons designated by the Administrative Law Judge.

(d) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his/her response to include information thereafter acquired, except as follows:

(1) A party is under a duty to supplement timely his/her response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he/she is expected to testify, and the substance of his/her testimony.

(2) A party is under a duty to amend timely a prior response if he/she later obtains information upon the basis of which:

(i) He/she knows the response was incorrect when made; or

(ii) He/she knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Administrative Law Judge or agreement of the parties.

(e) *Stipulations regarding discovery.* Unless otherwise ordered, a written stipulation entered into by all the parties and filed with the Administrative Law Judge assigned may:

(1) Provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner, and when so taken may be used like other depositions; and

(2) Modify the procedures provided by these rules for other methods of discovery.

§ 68.15 Written interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any authorized officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be filed with the Administrative Law Judge and served on all parties to the proceeding.

(b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons of objection shall be stated in lieu of an answer. The answers and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answer or objections upon all parties to the proceeding within thirty (30) days after service of the interrogatories, or within such shorter or longer period as the Administrative Law Judge may allow.

(c) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Administrative Law Judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(d) A person or entity upon whom interrogatories are served may respond by the submission of business records, indicating to which the documents respond, if they are sufficient to answer said interrogatories.

§ 68.16 Production of documents, things, and inspection of land.

(a) Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his/her behalf, to inspect and copy any designated documents or things or to inspect land, in the possession, custody, or control of the party upon whom the request is served; and

(2) Permit the party making the request, or a person acting on his/her behalf, to enter the premises of the party upon whom the request is served to accomplish the purposes stated in paragraph (a)(1) of this section.

(b) The request may be served on any party without leave of the Administrative Law Judge.

(c) The request shall:

(1) Set forth the items to be inspected either by individual item or by category;

(2) Describe each item or category with reasonable particularity; and

(3) Specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall serve on the party submitting the request a written response within thirty (30) days after service of the request.

(e) The response shall state, with respect to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

(f) A copy of each request for production and each written response shall be served on all parties and filed with the Administrative Law Judge.

§ 68.17 Admissions.

(a) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(b) Each matter of which an admission is requested is admitted unless, within thirty (30) days after service of the request or such shorter or longer time as the Administrative Law Judge may allow, the party to whom the request is directed serves on the requesting party:

(1) A written statement denying specifically the relevant matters of which an admission is requested;

(2) A written statement setting forth in detail the reasons why he/she can

neither truthfully admit nor deny them; or

(3) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(c) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he/she has made reasonable inquiry and that the information known or readily obtainable by him/her is insufficient to enable the party to admit or deny.

(d) Any matter admitted under this section is conclusively established unless the Administrative Law Judge on motion permits withdrawal or amendment of the admission.

(e) A copy of each request for admission and each written response shall be served on all parties and filed with the Administrative Law Judge.

§ 68.18 Depositions.

(a) *When, how and by whom taken.* The deposition of any witness may be taken at any stage of the proceeding at reasonable times. Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths. All costs involved with the taking of depositions, including the cost of a certified court reporter and the original transcripts, shall be paid by the party seeking the depositions.

(b) *Notice.* Any party desiring to take the deposition of a witness shall give notice in writing to the witness and all other parties of the time and place of the deposition, and the name and address of each witness. If documents are requested, the notice shall include a written request for the production of documents. Not less than ten (10) days written notice shall be given when the deposition is to be taken within the continental United States, and not less than twenty (20) days written notice shall be given when the deposition is to be taken elsewhere, unless otherwise permitted by the Administrative Law Judge or agreed to by the parties.

(c) *Taking and receiving in evidence.* Each witness testifying upon deposition shall testify under oath and any other party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read by or to, and subscribed by the witness and certified by the person administering the oath.

(d) *Motion to terminate or limit examination.* During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. However, the objecting party or deponent must immediately move the Administrative Law Judge for a ruling on his/her objections to the deposition conduct or proceedings. The Administrative Law Judge may then limit the scope or manner of the taking of the deposition.

§ 68.19 Motion to compel response to discovery; sanctions.

(a) If a deponent fails to answer a question propounded, or a party upon whom a discovery request is made pursuant to §§ 68.14 through 68.18, fails to respond adequately or objects to the request or to any part thereof, or fails to permit inspection as requested, the discovering party may move the Administrative Law Judge for an order compelling a response or inspection in accordance with the request. Likewise, a party who has taken a deposition or has requested admissions or has served interrogatories may move to determine the sufficiency of the answers or objections thereto. Unless the objecting party sustains his/her burden of showing that the objection is justified, the Administrative Law Judge shall order that an answer be served. If the Administrative Law Judge determines that an answer does not comply with the requirements of these rules, he/she may order either that the matter is admitted or that an amended answer be served.

(b) The motion shall set forth:

(1) The nature of the questions or request;

(2) The response or objections of the party upon whom the request was served; and

(3) Arguments in support of the motion.

(c) If a party or an officer or agent of a party fails to comply with an order, including, but not limited to, an order for the taking of a deposition, the production of documents, or the answering of interrogatories, or responding to request for admissions, or any other order of the Administrative Law Judge, the Administrative Law Judge, for the purposes of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action in regard thereto as is just, including but not limited to the following:

(1) Infer and conclude that the admission, testimony, documents, or other evidence would have been adverse to the non-complying party;

(2) Rule that for the purposes of the proceeding the matter or matters concerning which the order was issued be taken as established adversely to the non-complying party;

(3) Rule that the non-complying party may not introduce into evidence or otherwise rely upon testimony by such party, officer or agent, or the documents or other evidence, in support of or in opposition to any claim or defense;

(4) Rule that the non-complying party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence should have been shown;

(5) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both;

(6) In the case of failure to comply with a subpoena, the Administrative Law Judge may also take the action provided in § 68.21(e); and

(7) In ruling on a motion made pursuant to this section, the Administrative Law Judge may make and enter a protective order such as he/she is authorized to enter on a motion made pursuant to § 68.40.

§ 68.20 Use of depositions at hearings.

(a) *Generally.* At the hearing, any part or all of a deposition, so far as admissible under the Federal Rules of Evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness;

(2) The deposition of an expert witness may be used by any party for any purpose, unless the Administrative Law Judge rules that such use would be unfair or a violation of due process;

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association which is a party, may be used by any other party for any purpose;

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Administrative Law Judge finds:

(i) That the witness is dead; or

(ii) That the witness is out of the United States or more than 100 miles from the place of hearing unless it

appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used;

(5) If only part of a deposition is offered in evidence by a party, any other party may require him/her to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts; and

(6) Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any hearing has been dismissed and another proceeding involving the parties or their representatives or successors in interest has been brought (or commenced), all depositions lawfully taken and duly filed in the former proceeding may be used in the latter if originally taken therefor.

(b) *Objections to admissibility.* Except as provided in this paragraph, objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

§ 68.21 Subpoenas.

(a) Except as provided in paragraph (b) of this section, the presiding Administrative Law Judge may issue subpoenas as authorized by statute or law upon written application of a party requiring attendance and testimony of witnesses and production of things including, but not limited to, papers, books, documents, records, correspondence, or tangible things in their possession and under their control and access to such things for the purposes of examination and copying. A subpoena may be served by certified mail or by any person who is not less than 18 years of age. A witness, other than a witness for the Federal Government, may not be required to attend a deposition or hearing unless the mileage and witness fee applicable to witnesses in courts of the United States for each date of attendance is paid in advance of the date of the proceeding.

(b) If a party's written application for subpoena is submitted three (3) working days or less before the hearing to which it relates, a subpoena shall issue at the discretion of the presiding Administrative Law Judge, as appropriate.

(c) The subpoena shall identify the person or things subpoenaed, the person to whom and the place, date, and the time at which it is returnable or the nature of the evidence to be examined or copied, and the date and time when access is requested.

(d) Any person served with a subpoena who intends not to comply with it shall, within ten (10) days after the date of service of the subpoena upon him or her, petition the Administrative Law Judge to revoke or modify the subpoena. A copy of the petition shall be served on all parties to the hearing. The petition shall separately identify each portion of the subpoena with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition. Within eight (8) days after receipt of the petition the party who applied for such subpoena may respond to such petition and the Administrative Law Judge shall then make a final determination upon the petition. The Administrative Law Judge shall cause to be served a copy of the final determination of the petition upon the petitioner and all parties.

(e) Failure to comply. Upon the failure to any person to comply with an order to testify or a subpoena issued under this Section, the Administrative Law Judge may, where authorized by statute or by law, apply through appropriate counsel to the appropriate district court of the United States for an order requiring compliance with the order or subpoena.

§ 68.22 Designation of Administrative Law Judge.

Hearings shall be held before an Administrative Law Judge appointed under 5 U.S.C. 3105 and assigned to the Department of Justice. The presiding judge in any case shall be designated by the Chief Administrative Hearing Officer. In unfair immigration-related employment practice cases, only Administrative Law Judges specially designated by the Attorney General as having special training respecting employment discrimination may be chosen by the Chief Administrative Hearing Officer to preside.

§ 68.23 Notice of hearing.

(a) *Generally.* Except when hearings are scheduled by calendar call, the Office of the Chief Administrative Hearing Officer, or the Administrative Law Judge to whom the matter is referred shall notify the parties by mail of a day, time, and place set for hearing thereon or for a prehearing conference, or both. No date earlier than thirty (30) days after the date of such notice shall be set for such hearing or conference, except by agreement of the parties and the permission of the Administrative Law Judge. Any party, however, may by motion and for good cause shown request the Administrative Law Judge to shorten the time for a hearing. In no event, however, may the setting of the hearing be less than five (5) days after the complaint is served on the respondent.

(b) *Change of date, time, and place.* The Administrative Law Judge assigned to the case may change the time, date, and place of the hearing, or temporarily adjourn a hearing, or upon motion and for good cause shown by a party. The parties shall be given not less than ten (10) days notice of the new hearing date.

(c) *Place of hearing.* Unless otherwise required by statute or regulation, due regard shall be given to the convenience of the parties and the witnesses in selecting a place for the hearing. In this regard, 8 U.S.C. 1324a requires that hearings in unlawful employment cases be held at the nearest practicable place to the place where the person or entity resides or to the place where the alleged violation occurred.

§ 68.24 Continuances.

(a) *When granted.* Continuances will only be granted in cases of prior judicial commitments or undue hardship, or a showing of other good cause.

(b) *Time limit for requesting.* Except for good cause arising thereafter, requests for continuances must be filed

not later than fourteen (14) days prior to the date set for hearing.

(c) *How filed.* Motions for continuances shall be in writing. At least 3" x 3½" of blank space shall be provided on the last page of the motion to permit space for the entry of an order by the Administrative Law Judge. Copies shall be served on all parties. Any motions for continuances made within ten (10) days of the date of the scheduled proceeding shall, in addition to the written request, be telephonically communicated to the Administrative Law Judge or a member of his/her staff and to all other parties. Motions for continuances, based on reasons not reasonably ascertainable prior thereto, may also be made on the record at calendar call, prehearing conferences, or hearings.

(d) *Ruling.* Time permitting, the Administrative Law Judge shall issue a written order in advance of the scheduled proceeding date which either allows or denies the request. Otherwise, the ruling may be made orally by telephonic communication to the party requesting same who shall be responsible for telephonically notifying all other parties. Oral orders shall be confirmed in writing by the Administrative Law Judge.

§ 68.25 Authority of Administrative Law Judge.

(a) *General powers.* In any proceeding under this part, the Administrative Law Judge shall have all powers necessary to the conduct of fair and impartial hearings, including, but not limited to, the following:

(1) Conduct formal hearings in accordance with the provisions of this part;

(2) Administer oaths and examine witnesses;

(3) Compel the production of documents and appearance of witnesses in control of the parties;

(4) Compel the appearance of witnesses by the issuance of subpoenas as authorized by statute or law;

(5) Issue decisions and orders;

(6) Take any action authorized by the Administrative Procedure Act;

(7) Exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Attorney General as are necessary and appropriate therefor;

(8) Where applicable, take any appropriate action authorized by the Rules of Civil Procedure for the United States District Courts, issued from time-to-time and amended pursuant to 28 U.S.C. 2072; and

(9) Do all other things necessary to enable him/her to discharge the duties of the office.

(b) *Enforcement.* If any person in proceedings before an Administrative Law Judge disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the Administrative Law Judge responsible for the adjudication, where authorized by statute or law, may certify the facts to the Federal District Court having jurisdiction in the place in which he/she is sitting to request appropriate remedies.

§ 68.26 Unavailability of Administrative Law Judge.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Hearing Officer may designate another Administrative Law Judge for the purpose of further hearing or other appropriate action.

§ 68.27 Disqualification.

(a) When an Administrative Law Judge deems himself or herself disqualified to preside in a particular proceeding, such judge shall withdraw therefrom by notice on the record directed to the Chief Administrative Hearing Officer.

(b) Whenever any party shall deem the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Administrative Law Judge a motion to recuse. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The Administrative Law Judge shall rule upon the motion.

(c) In the event of disqualification or recusal of an Administrative Law Judge as provided in paragraph (a) or (b) of this section, the Chief Administrative Hearing Officer shall refer the matter to another Administrative Law Judge for further proceedings.

§ 68.28 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of the Administrative Law Judge, except as a witness or counsel in the proceedings.

§ 68.29 Expedition.

Hearings shall proceed with all reasonable speed, insofar as practicable and with due regard to the convenience of the parties.

§ 68.30 Representation.

(a) *Appearances.* Any party shall have the right to appear at a hearing to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any intervenor (except the Special Counsel) shall be limited to the extent prescribed by the Administrative Law Judge.

(b) Each attorney shall file a notice of appearance. Such notice shall indicate the name of the case or controversy, the docket number if assigned, and the party on whose behalf the appearance is made.

(c) *Rights of parties.* Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the right to present evidence, to conduct such cross-examination as may be necessary for a full and complete disclosure of the facts, and to be heard by objection, motion, and argument.

(d) *Rights of participation.* Every party shall have the right to make a written or oral statement of position. At the discretion of the Administrative Law Judge, participants may file proposed findings of fact, conclusions of law, and a post hearing brief.

(e) *Rights of witnesses.* Any person compelled to testify in a proceeding in response to a subpoena may be accompanied, represented, and advised by counsel.

(f) *Department of Justice Representation.* The Department of Justice may be represented by the appropriate counsel in these proceedings.

(g) *Qualifications*— (1) *Attorneys.* An attorney at law who is admitted to practice before the federal courts or before the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States, may practice before the Administrative Law Judges. An attorney's own representation that he/she is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Administrative Law Judge. Any attorney of record who intends to withdraw from a case must provide the Administrative Law Judge and all parties with written notice at

least ten (10) days before the hearing date, unless otherwise allowed by the Administrative Law Judge.

(2) *Denial of authority to appear.* The Administrative Law Judge may deny the privilege of appearing to any person, within applicable statutory constraints, e.g., 5 U.S.C. 555, who he/she finds, after notice and an opportunity for hearing in the matter, does not possess the requisite qualifications to represent others; or is lacking in character or integrity; or has engaged in unethical or improper professional conduct; or has engaged in an act involving moral turpitude. No provision hereof shall apply to any person who appears on his/her own behalf or on behalf of any corporation, partnership, or association of which the person is a partner, officer, or regular employee.

(h) *Authority for representation.* Any individual acting in a representative capacity in any adjudicative proceeding may be required by the Administrative Law Judge to show his/her authority to act in such capacity. A regular employee of a party who appears on behalf of the party may be required to show his/her authority to so appear.

§ 68.31 Legal assistance.

The Office of the Chief Administrative Hearing Officer does not have authority to appoint counsel, nor does it refer parties to attorneys.

§ 68.32 Standards of conduct.

(a) All persons appearing in proceedings before an Administrative Law Judge are expected to act with integrity, and in an ethical manner.

(b) The Administrative Law Judge may exclude parties, witnesses, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against ex parte communications. The Administrative Law Judge shall state in the record the cause for suspending or barring an attorney from participation in a particular proceeding. Any attorney so suspended or barred may appeal to the Chief Administrative Hearing Officer but no proceeding shall be delayed or suspended pending disposition of the appeal; provided, however, that the Administrative Law Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or representative.

§ 68.33 Hearing room conduct.

Proceedings shall be conducted in an orderly manner. The consumption of food or beverage, smoking, or rearranging of courtroom furniture, unless specifically authorized by the Administrative Law Judge, are prohibited.

§ 68.34 Ex Parte communications.

(a) *General.* Except for other employees of the Executive Office for Immigration Matters, the Administrative Law Judge shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. Communications by the Office of the Chief Administrative Hearing Officer, the assigned judge, or any party for the sole purpose of scheduling hearings or requesting extensions of time are not considered ex parte communications, except that all other parties shall be notified of such request by the requesting party and be given an opportunity to respond thereto.

(b) *Sanctions.* A party or participant who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including, but not limited to, exclusion from the proceedings and adverse ruling on the issue which is the subject of the prohibited communication.

§ 68.35 Waiver of right to appear and failure to participate or to appear.

(a) *Waiver of right to appear.* If all parties waive in writing their right to appear before the Administrative Law Judge or to present evidence or argument personally or by representative, it shall not be necessary for the Administrative Law Judge to give notice of and conduct an oral hearing. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Chief Administrative Hearing Officer or the Administrative Law Judge. Where such a waiver has been filed by all parties and they do not appear before the Administrative Law Judge personally or by representative, the Administrative Law Judge shall make a record of the relevant written evidence submitted by the parties, together with any pleadings they may submit with respect to the issues in the case. Such documents shall be considered as all of the evidence in this case and decision shall be based on them.

(b) *Dismissal—Abandonment by party.* A request for hearing may be dismissed upon its abandonment or settlement by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his/her representative appears at the time and place fixed for the hearing and either—

(1) Prior to the time for hearing, such party does not show good cause as to why neither he/she nor his/her representative can appear; or

(2) Within ten (10) days after the mailing of a notice to him/her by the Administrative Law Judge to show cause, such party does not show good cause for such failure to appear and fails to notify the Administrative Law Judge prior to the time fixed for hearing that he/she cannot appear. A default decision, under § 68.6(b), may be entered, with prejudice, against any party failing, without good cause, to appear at a hearing.

§ 68.36 Motion for summary decision.

(a) Any party may, at least twenty (20) days before the date fixed for any hearing, move with or without supporting affidavits for a summary decision on all or any part of the proceeding. Any other party may, within ten (10) days after service of the motion, serve opposing papers with affidavits if appropriate, or countermove for summary decision. The Administrative Law Judge may set the matter for argument and/or call for submission of briefs.

(b) Any affidavits submitted with the motion shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(c) The Administrative Law Judge may enter summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The Administrative Law Judge may deny the motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

(d) Form of summary decisions. Any final decision issued as a summary decision shall conform to the requirements for all final decisions. An initial decision and a final decision made under this paragraph shall include a statement of:

(1) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(2) Any terms and conditions of the rule or order.

(e) Hearings on issue of fact. Where a genuine question of material fact is raised, the Administrative Law Judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 68.37 Formal hearings.

(a) *Public.* Hearings shall be open to the public. However, in unusual circumstances, the Administrative Law Judge may order a hearing or any part thereof closed, where to do so would be in the best interests of the parties, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the decision. Any objections thereto shall be made a part of the record.

(b) *Jurisdiction.* The Administrative Law Judge shall have jurisdiction to decide all issues of fact and related issues of law.

(c) *Amendments to conform to the evidence.* When issues not raised by the request for hearing, prehearing stipulation, or prehearing order are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence may be made on motion of any party at any time; but failure to so amend does not affect the result of the hearing of these issues. The Administrative Law Judge may grant a continuance to enable the objecting party to meet such evidence.

§ 68.38 Evidence.

(a) *Applicability of Federal Rules of Evidence.* Unless otherwise provided by statute or these rules, and where appropriate, the Federal Rules of Evidence will be a general guide to all proceedings held pursuant to these rules.

(b) *Admissibility.* All relevant material and reliable evidence is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, waste of time, immateriality, or needless presentation of cumulative evidence. Stipulations of fact may be introduced in evidence with respect to any issue. Every party shall have the right to present his/her case or defense by oral or documentary evidence, depositions, and duly authenticated copies of records and documents; to submit rebuttal evidence; and to conduct such reasonable cross-examination as may be required for a full and true disclosure of the facts. The Administrative Law Judge shall have the right in his/her discretion to limit the number of witnesses whose testimony may be merely cumulative and shall, as a matter of policy, not only exclude irrelevant, immaterial, or unduly repetitious evidence but shall also limit the cross-examination of witnesses to reasonable bounds so as not to prolong the hearing unnecessarily, and unduly burden the record. Material and relevant evidence shall not be excluded because it is not the best evidence, unless its authenticity is challenged, in which case reasonable time shall be given to establish its authenticity. When only portions of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the Administrative Law Judge and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the original document should be made available for examination and for use by opposing counsel for purposes of cross-examination. Compilations, charts, summaries of data, and photostatic copies of documents may be admitted in evidence if the proceedings will thereby be expedited, and if the material upon which they are based is available for examination by the parties.

(c) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall include argument or debate thereon. Rulings on such objections shall be made at the time of objection or prior to the receipt of further evidence. Such ruling shall be a part of the record.

(d) *Exceptions.* Formal exceptions to the rulings of the Administrative Law Judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the Administrative Law Judge is made or sought, makes known the action he/she desires the Administrative Law Judge to take or his/her objection to an action taken, and his/her grounds therefor.

(e) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the Administrative Law Judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony, and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

§ 68.39 Official notice.

Official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice. Provided, however, that the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

§ 68.40 In camera and protective orders.

(a) *Privileged communications.* Upon application of any person, the Administrative Law Judge may limit discovery or introduction of evidence or issue such protective or other orders as in his/her judgment may be consistent with the objective of protecting privileged communications and of protecting data and other material the disclosure of which would unreasonably prejudice a party, witness, or third party.

(b) *Classified or sensitive matter.* (1) Without limiting the discretion of the Administrative Law Judge to give effect to any other applicable privilege, it shall be proper for the Administrative Law Judge to limit discovery or introduction of evidence or to issue such protective or other orders as in his/her judgment may be consistent with the objective of preventing undue disclosure of classified or sensitive matter. Where the Administrative Law Judge determines that information in documents containing sensitive matter should be made available to a respondent, he/she may direct the party to prepare an unclassified or nonsensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

(2) If the Administrative Law Judge determines that this procedure is inadequate and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to any party, he/she may advise the parties and provide opportunity for arrangements to permit a party or a representative to have access to such matter. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure.

§ 68.41 Exhibits.

(a) *Identification.* All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(b) *Exchange of exhibits.* When written exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and one copy to the Administrative Law Judge, unless the parties previously have been furnished with copies or the Administrative Law Judge directs otherwise. If the Administrative Law Judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing.

(c) *Substitution of copies for original exhibits.* The Administrative Law Judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

§ 68.42 Records in other proceedings.

In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the Administrative Law Judge directs otherwise.

§ 68.43 Designation of parts of documents.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, the participant offering the same shall plainly designate the matter so offered, segregating and excluding insofar as practicable the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would necessarily encumber the record, such document will not be received in evidence, but may be marked for identification, and if properly authenticated, the relevant and material parts thereof may be read into the record, or if the Administrative Law Judge so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit, and copies shall be delivered by the participant offering the same to the other parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

§ 68.44 Authenticity.

The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

§ 68.45 Stipulations.

The parties may by stipulation in writing at any stage of the proceeding, or by stipulation made orally at the hearing, agree upon any pertinent facts in the proceeding. It is desirable that the facts be thus agreed upon so far as and whenever practicable. Stipulations may be received in evidence at a hearing or prior thereto, and when received in evidence, shall be binding on the parties thereto.

§ 68.46 Record of hearings.

(a) *General.* A verbatim written record of all hearings shall be kept. All evidence upon which the Administrative Law Judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits introduced as evidence shall be marked for identification and incorporated into the record. Transcripts may be obtained by the parties and the public from the official court reporter of record. Any fees in connection therewith shall be the responsibility of the parties.

(b) *Corrections.* Corrections to the official transcript will be permitted upon motion. Motions for correction must be submitted within ten (10) days of the receipt of the transcript, or such other time as may be permitted by the Administrative Law Judge. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the Administrative Law Judge.

§ 68.47 Closing of hearings.

The Administrative Law Judge may hear arguments of counsel and may limit the time of such arguments at his/her discretion, and may allow briefs to be filed on behalf of either party but shall closely limit the time within which the briefs for both parties shall be filed, so as to avoid unreasonable delay.

§ 68.48 Closing the record.

(a) When there is a hearing, the record shall be closed at the conclusion of the hearing unless the Administrative Law Judge directs otherwise.

(b) If any party waives a hearing, the record shall be closed on the date set by the Administrative Law Judge as the final date for the receipt of submissions of the parties to the matter.

(c) Once the record is closed, no additional evidence shall be accepted into the record except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record. However, the Administrative Law Judge shall make part of the record any motions for attorney's fees authorized by statutes, and any supporting documentation, any determinations thereon, and any approved correction to the transcript.

§ 68.49 Receipt of documents after hearing.

Documents submitted for the record after the close of the hearing will not be received in evidence except upon ruling of the Administrative Law Judge. Such documents when submitted shall be accompanied by proof that copies have been served upon all parties, who shall have an opportunity to comment thereon. Copies shall be received not later than twenty (20) days after the close of the hearing except for good cause shown, and not less than ten (10) days prior to the date set for filing briefs. Exhibit numbers should be assigned by counsel or the party.

§ 68.50 Restricted access.

On his/her own motion, or on the motion of any party, the Administrative Law Judge may direct that there be a restricted access portion of the record to contain any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. This portion of the record shall be placed in a separate file and clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings.

§ 68.51 Decision and order of the Administrative Law Judge.

(a) *Proposed decision and order.* Within twenty (20) days of filing of the transcript of the testimony, or such additional time as the Administrative Law Judge may allow, a party, if authorized by the Administrative Law Judge, may file proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings

and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. Unless an extension of time is given by the Chief Administrative Hearing Officer on good cause, the Administrative Law Judge shall make his/her decision within sixty (60) days after receipt of the hearing transcript or of receipt by the Administrative Law Judge of post-hearing briefs, proposed findings of fact, and conclusions of law, if any. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons therefor, upon each material issue of fact or law presented on the record. The decision of the Administrative Law Judge shall be based upon the whole record. It shall be supported by reliable and probative evidence. The standard of proof shall be by a preponderance of the evidence. Such decision shall be in accordance with the regulations and rulings of the statute or regulations conferring jurisdiction.

(c) *Order.*

(1) Unfair Immigration-Related Employment Practice Cases.

(i) If, upon the preponderance of the evidence, the Administrative Law Judge determines that an unfair immigration-related employment practice has occurred, the order shall include a requirement that the respondent cease and desist from such practice. The order may also require the respondent—

(A) To comply with the requirements of 8 U.S.C. 1324a(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(B) To retain for a period of up to three years, and only for purposes consistent with 8 U.S.C. 1324a(b)(5), the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(C) To hire individuals directly and adversely affected, with or without back pay; and

(D) Except as provided in § 68.51(c)(1)(ii), to pay a civil penalty of not more than $1,000 for each individual discriminated against; and in the case of a respondent previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

(ii) Back pay liability shall not accrue from a date more than two years prior to the date of the filing of the complaint with the Administrative Law Judge. In no event shall back pay accrue from before November 6, 1986. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

(iii) In applying this section in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment without reference to the practices of, and not under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(iv) If upon the preponderance of the evidence, the Administrative Law Judge determines that an unfair immigration-related employment practice has not occurred, then the order shall dismiss the complaint.

(v) Attorneys' fees. The Administrative Law Judge may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

(2) Unlawful employment of unauthorized aliens.

(i) If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated 8 U.S.C. 1324a (a)(1)(A) or (a)(2), the order shall include a requirement that the respondent cease and desist from such violations and to pay a civil penalty in an amount of—

(A) Not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred;

(B) Not less than $2,000 and not more than $5,000 for each unauthorized alien in the case of a respondent previously subject to one order under this subparagraph; or

(C) Not less than $3,000 and not more than $10,000 for each unauthorized alien in the case of a respondent previously subject to more than one order under this subparagraph.

(ii) The order may also require the respondent to comply with the requirements of 8 U.S.C. 1324a(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years; and to take such other remedial action as is appropriate.

(iii) In the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(iv) With respect to a violation of 8 U.S.C. 1324a (A)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(3) Prohibition of indemnity bonds. If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated 8 U.S.C. 1324a (g)(1), the order may require the respondent to pay a penalty of $1,000 for each individual with respect to whom such violation occurred and require the return of any amounts received in such violation to the individual, or, if the individual cannot be located, to the general fund of the Treasury.

§ 68.52 Administrative and judicial review.

(a) Unlawful employment and prohibition of indemnity bond cases under 8 U.S.C. 1324a. Upon issuance of a final order by an Administrative Law Judge in an unlawful employment or prohibition of indemnity bond case under 8 U.S.C. 1324a, a copy of the decision together with the record of proceeding will be forwarded to the Chief Administrative Hearing Officer, an official having no review authority over other immigration-related matters, who may conduct such review he or she deems appropriate. Any party may file with the Chief Administrative Hearing Officer within five (5) days of the date of the decision a written request for review of any issue of law together with supporting arguments. Within thirty (30) days from date of decision, the Chief Administrative Hearing Officer may issue an order which adopts, affirms, modifies or vacates the Administrative Law Judge's order.

(1) If the Chief Administrative Hearing Officer issues no order, the Administrative Law Judge's order becomes the final order of the Attorney General. If the Chief Administrative Hearing Officer modifies or vacates the order, the order of the Chief Administrative Hearing Officer becomes the final order.

(2) A person or entity adversely affected by a final order respecting an assessment or penalty may, within forty-five (45) days after the date the final

order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order. Failure to request review by the Chief Administrative Hearing Officer of a decision by an Administrative Law Judge shall not prevent a party from seeking judicial review.

(b) Unlawful immigration-related employment practice cases under 8 U.S.C. 1324b. Any person aggrieved by an order issued under § 68.51(c)(1) may, within 60 days after entry of the order, seek review of the order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the respondent resides or transacts business. If an order issued under § 68.51(c)(1) is not appealed, the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge, other than an Immigration and Naturalization Service officer) may file a petition in the United States District Court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, requesting that the order be enforced.

§ 68.53 Certification of official record.

Upon timely receipt of notification that administrative review is to be conducted or that an appeal has been taken, the Chief Administrative Hearing Officer shall promptly certify and file with the appropriate United States Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

Date: November 13, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-27014 Filed 11-19-87; 3:10 pm]

BILLING CODE 1531-26-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket Nos. 84-1231, 84-1233, and 84-1234; FCC 87-302]

Cellular Communications Systems, Frequency Allocation in the 900 MHz Reserve Band, and Spectrum Allocation for and Establishment of Other Rules and Policies Regarding the Use of Radio Frequencies in a Land Mobile Satellite Service

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This action amends Part 2 of the Commission's Rules and denies eight petitions for reconsideration of the Report and Order in General Docket Nos. 84-1231, 84-1233, and 84-1234, FCC 86-333, 51 FR 37398 (October 22, 1986), which allocated spectrum to the cellular, private land mobile, general purpose mobile, and mobile satellite services. The rule change is necessary to clarify language in footnote US308, and the denial is based upon the lack of new information from the petitioning parties.

EFFECTIVE DATE: December 24, 1987.

FOR FURTHER INFORMATION CONTACT: Julius Knapp, Office of Engineering and Technology, Spectrum Engineering Division, Frequency Allocations Branch, (202) 653-8108.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in General Dockets 84-1231, 84-1233 and 84-1234, FCC 87-302, Adopted September 17, 1987, and released November 9, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20032.

Summary of Memorandum Opinion and Order

In this Memorandum Opinion and Order the Commission considered eight individual petitions for reconsideration of its Report and Order decision to allocate 6 MHz for public safety and 2 MHz for a general purpose radio service from the 800-900 MHz reserve and 27 MHz to mobile satellite to be shared with aeronautical mobile satellite in the L-band. *See* 51 FR 37398 (October 22, 1986). The petitions were filed by Aeronautical Radio, Inc., et al. (Aviation parties); Airfone, Inc.; Associated Public Safety Communications Officers, Inc. (APCO); Global Land Mobile Satellite, Inc.; Hughes Communications Mobile Satellite Services, McCaw Space Technologies, Inc., MCCA American Satellite Service Corp., Mobile Satellite Corp., and Skylink Corp. filing jointly as the "Coalition"; Land Mobile Communications Council (LMCC); North American Mobile Satellite (NAMS); and the National Aeronautics and Space Administration (NASA).

Two petitions requested a change in the Commission's 6 MHz allocation for public safety radio use at 821-824/866-869 MHz. APCO requested that 2 MHz more be added to the 6 MHz allocation for public safety use while NASA petitioned for placing the allocated 6 MHz into a reserve pending the outcome of the National Plan and 1987 Mobile WARC. The National Plan addresses how the public safety allocation will be used. The 1987 Mobile WARC was held in Geneva, Switzerland in September/October 1987, and considered mobile international allocations.

Concerning the 2 MHz allocation at 901-902/940-941 MHz for a General Purpose Radio Service, LMCC requested that the allocation instead be given to private land mobile. It claimed the record supported its request.

Global Land Mobile Satellite and NAMS each petitioned the Commission for an 8 MHz allocation at UHF for the mobile satellite service. Both parties reiterated previous arguments that the UHF allocation is essential to the success of the service. With regard to the Commission's allocation at L-band to the mobile satellite service, Aviation Parties argued for a dismissal of mobile satellite from the L-band frequencies 1545-1559/1646.5-1660.5 MHz, claiming a need to use these frequencies on an exclusive basis for the aeronautical mobile satellite service. In contrast, the petition from the Mobile Satellite Coalition requested a strengthening of the Commission's allocation to make the mobile satellite service and the aeronautical mobile satellite service co-primary across the entire L-band allocation.

The final petitioner—Airfone, Inc.—requested that the 4 MHz placed into reserve (849-851/894-896 MHz) be allocated to establish an air-ground radiotelephone service.

The Commission denied all eight petitions claiming that none of the parties had submitted information or facts substantially different from that submitted earlier in this proceeding. Accordingly, the Commission was not persuaded that its allocation decision should be altered.

However, in response to comments, a clarification of Footnote US308 was made to indicate that AMSS(R) communications, beyond the 10 MHz primary allocation that is available, should appropriately be accommodated by real-time preemptive access on the MSS system in the shared 18 MHz. Also, the footnote recognizes that all communications involving safety of life

are to be given priority over the other communications.

Ordering Clauses

For the foregoing reasons the petitions for reconsiderations filed by Aeronautical Radio, Inc. et al, Airfone, Inc.; Associated Public Safety Communications Officers, Inc.; Global Land Mobile Satellite, Inc.; Hughes Communications Mobile Satellite Services, McCaw Space Technologies, Inc., MCCA American Satellite Service Corp., Mobile Satellite Corp., and Skylink Corp. (Coalition); Land Mobile Communications Council; North American Mobile Satellite; and the National Aeronautics and Space Administration are hereby denied.

It is ordered, that pursuant to the authority of 47 U.S.C. 154(i), 301 and 303(r), that Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as shown below. This amendment becomes effective December 24, 1987.

List of Subjects in 47 CFR Part 2

Frequency allocations, Radio.

Rule Changes

Part 2 of Title 47 of the Code of Federal Regulations is amended as follows:

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

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

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

2. Section 2.106, the Table of Frequency Allocations, is amended by revising the text of footnote US308 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

United States (U.S.) Footnotes

* * * * *

US308 In the frequency bands 1549.5–1558.5 MHz and 1651–1660 MHz, the Aeronautical-Mobile-Satellite (R) requirements that cannot be accommodated in the 1545–1549.5 MHz, 1558.5–1559 MHz, 1646.5–1651 MHz and 1660–1660.5 MHz bands shall have priority access with real-time preemptive capability for communications in the mobile satellite service. Systems not interoperable with the aeronautical mobile-satellite (R) service shall operate on a secondary basis. Account shall be taken of the priority of safety-related communications in the mobile-satellite service.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–26961 Filed 11–23–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–289, RM–5389, RM–5551, RM–5552]

Radio Broadcasting Services; Santa Margarita and Guadalupe, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 291B1 for Channel 292A at Santa Margarita, California, and modifies the permit of Radio Station KWSP(FM), Santa Margarita, to specify operation on Channel 291B1 in response to a petition for rule making filed by Mid-Coast Radio, Inc. In addition, this document denies a counterproposal to substitute Channel 290B1 for Channel 288A at Guadalupe, California, filed by Armando Garcia.

EFFECTIVE DATE: January 4, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–289, adopted October 29, 1987, and released November 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Santa Margarita, California, by deleting Channel 292A and adding Channel 291B1.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87–26965 Filed 11–23–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–33; RM–5599]

Radio Broadcasting Services; Mountain Lake Park, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 255A to Mountain Lake Park, Maryland, in response to a petition filed by Mountain Lake Park Broadcasting Company. The allocation could provide a first local service for the community. With this action, this proceeding is terminated.

DATES: Effective January 4, 1988. The window period for filing applications will open on January 5, 1988, and close on February 4, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–33, adopted November 2, 1987, and released November 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Maryland is amended by

adding Channel 255A, Mountain Lake Park.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-26963 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-194; RM-5605]

Radio Broadcasting Services; Roswell, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Roswell Christian Radio, Inc., allocates Channel *258A to Roswell, New Mexico, and reserves it for noncommercial educational use. Channel *258A can be allocated to Roswell in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Mexican concurrence has been received. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-194, adopted October 30, 1987, and released November 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230, 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Roswell, New Mexico, is amended by adding Channel *258A.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-26971 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-197; RM-5710]

Radio Broadcasting Services; Incline Village, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of North Lake Tahoe Broadcasting Company, substitutes Channel 261C2 for Channel 261A at Incline Village, Nevada, and modifies the license of Station KLKT to specify the higher powered channel. Channel 261C2 can be allocated to Incline Village in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.4 kilometers (5.8 miles) east to avoid a short-spacing to Station KRFD-FM, Channel 260, Marysville, California. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-197, adopted November 2, 1987, and released November 19, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Incline Village, Nevada, is amended by deleting Channel 261A and adding Channel 261C2.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-27026 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-96; RM-4890 and RM-5454]

Television Broadcasting Services; Willits, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots VHF Television Channel 11- to Willits, California in response to a counterproposal filed by Mad River Broadcasting Co., Inc. and denies a proposal to allot that channel to Fortuna, California filed by Sacramento Valley Television, Inc. Pursuant to the Commission's Order of July 17, 1987 imposing a freeze of the filing of applications in certain markets, no applications will be accepted for this allotment until the freeze is lifted. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-96, adopted November 3, 1987, and released November 19, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments for California, is amended by adding the entry of Willits, Channel 11-.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-27025 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-125; RM-5653]

Television Broadcasting Services; Columbia, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Columbia, Television, Inc., allocates Channel 47 to Columbia, South Carolina, as the community's fifth local commercial television service. Channel 47 can be allocated to Columbia in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.3 kilometers (5.8 miles) northeast to avoid a short-spacing to unused and unapplied for noncommercial educational Channel *47 at Macon, Georgia. The late-filed comments and counterproposals of Harry J. Pappas and Channel 47 Joint Venture were not accepted for consideration. Columbia is not one of the communities affected by the recently imposed freeze on new allotments within the minimum co-channel separation distance of thirty major markets. See *Order*, 52 FR 28346, July 29, 1987. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-125, adopted October 30, 1987, and released November 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments for Columbia, South Carolina, is amended by adding Channel 47.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-26968 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 52, No. 226
Tuesday, November 24, 1987

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 16; Docket No. 5015S]

General Crop Insurance Regulations; Peanut Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice for the purpose of withdrawing a Notice of Proposed Rulemaking (NPRM) amending the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 crop year. FCIC has determined that the proposed rule as published was incorrect in several instances and that insufficient time remains before the changes must be filed in the service offices in which to correct the document. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On Friday, October 30, 1987, FCIC published a Notice of Proposed rulemaking in the Federal Register at 52 FR 41723, proposing to amend the General Crop Insurance Regulations (7 CFR Part 401), effective with the 1988 and succeeding crop years, to issue a new Part 401.125, to be known as the Peanut Endorsement. The intended effect of the NPRM was to provide the regulations for insuring peanuts in an endorsement to the general crop insurance policy containing the standard terms and conditions common to most crops.

In reviewing the document for preparation as final rule, FCIC became aware of several discrepancies including unit division provisions not applicable to peanuts and insufficient consideration given to the matter of quota peanuts with respect to appraisal of production to count.

It has been determined that the NPRM as published is counter to the concept of actuarially sound peanut crop insurance. and insufficient time remains before the filing date of November 30, 1987, to re-publish a corrected NPRM. For this reason, the Notice of Proposed Rulemaking published in Friday, October 30, 1987, (52 FR 41725), is hereby withdrawn.

Done in Washington, DC on November 16, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–26987 Filed 11–23–87; 8:45 am]

BILLING CODE 3410–08–M

Commodity Credit Corporation

7 CFR Part 1421

Grains and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation (CCC), U.S. Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The proposed rule would amend the regulations at 7 CFR Part 1421 by: (1) Removing obsolete references to annual commodity supplements; (2) incorporating provisions with respect to the substitution of loan collateral; (3) revising settlement rates with respect to high moisture commodities delivered to CCC in settlement of loans; (4) revising support rate provisions with respect to handling and transportation costs; (5) revising loan grade requirements; and (6) amending warehouse receipt requirements.

DATE: Comments must be received on or before December 24, 1987 in order to be assured of consideration.

ADDRESS: Interested persons are invited to submit written comments to: Director, Commodity Operations Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Assistant to the Director, Commodity Operations Division. Telephone: (202) 447–6500.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with the provisions of Department Regulation 1521–1 and Executive Order 12291 and has been classified as "not-major." It has been determined that the provisions of this proposed rule will not result in: (1) Annual effects on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Commodity Loans and Purchases, Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Settlement of Loans

The regulations at 7 CFR Part 1421 currently provide that in the settlement of price support loans CCC will pay to the producer any amount of the loan which is in excess of the value of the commodity pledged as collateral for such loan, as determined by CCC. Loans are disbursed to a producer based upon

the quantity and quality of the commodity which is pledged as collateral. Since these loans are nonrecourse in nature, it has been determined that the loan should be satisfied by delivery to CCC of the loan collateral without regard to whether its value exceeds the settlement value determined by CCC.

Assumption of Loss to Loan Collateral

Section 425 of the Agricultural Act of 1949, as amended, provides that CCC may assume the loss incurred by a producer in the event the loan collateral is destroyed. As with all loans, the borrower remains responsible for the care of commodities pledged as collateral for CCC price support loans. 7 CFR 1421.15 provides that CCC will assume the loss incurred by a producer if the loan collateral is destroyed and the producer has not been negligent in the care of the commodity and if certain other conditions are met. This total assumption of loss by CCC results in the the assumption of some losses by CCC which should be more properly borne by the producer. Accordingly, this proposed rule provides that CCC may assume such losses. The proposed rule also provides that in some circumstances, notwithstanding the actions of the producer, CCC will not assume any loss due to the destruction of the loan collateral.

Denial of Farm-Stored Loans

The regulations of 7 CFR 1421.3 currently provide that a producer may be denied price support if the producer has been convicted of a criminal act, or has made misrepresentation in connection with any price support program or if the county committee has had difficulty in settling a loan with a producer. This proposed rule would provide that if a producer is convicted of a criminal act or made a misrepresentation with respect to a farm-stored loan that such a producer will be ineligible for farm-stored loans but will remain eligible for warehouse-stored loans. This change in 7 CFR 1421.3 will allow producers to receive price support and assure that CCC's interest in the loan collateral is protected.

Farm-Stored Tobacco

The regulations at 7 CFR Part 1421 currently provide that price support shall be made available on farm-stored flue-cured tobacco. This proposed rule would remove the Subpart entitled "1972 and Subsequent Crops Flue-Cured Tobacco Farm-Stored Loan Program" in accordance with sections 106A and 106B of the Agricultural Act of 1949, as amended, which provide that price support shall be made available through marketing associations.

Substitution

This proposed rule would allow producers, under terms and conditions specified by CCC, to use as collateral for a CCC price support loan commodities acquired by a producer which would otherwise be ineligible to be used for such purpose. This change is being proposed to allow producers who meet annual program requirements to take advantage of price support programs without having to transport their commodities to areas where grain elevators will accept the commodities for storage. The proposed change would permit eligible producers to feed or sell commodities produced on their farms and to pledge as collateral for a price support loan an equivalent quantity of grain which is acquired and stored by the producer in approved storage on or off the producer's farm.

High Moisture Grain Loans

Because normal trade channels are not available for the sale or movement of high moisture corn, barley, and sorghum, CCC is unable to accept physical delivery of the grain. The value of the grain is limited by its location and local markets. Consequently, CCC is proposing to establish settlement rates for high moisture grain delivered to CCC in settlement of loans based upon the selling price of the grain when offered for sale by CCC, or as otherwise determined by CCC.

Basic County Price Support Rate Adjustment

The regulations at 7 CFR Part 1421 currently provide that the basic county price support rates for corn placed in the Farm-Owned Reserve and for wheat, barley, sorghum, and rye placed under loan will be increased by amounts equal to the freight charges and the handling charges incurred in moving the commodity from the farm or warehouse stored to an in-line terminal or export location. Under current conditions, duplication or grain movement often occurs when producers move grain. For example, a county ASCS office may approve the movement of warehouse-stored loan grain from warehouse A to warehouse B, while another county ASCS office may approve the movement of warehouse-stored loan grain from warehouse B to warehouse A.

Also, producers receive an unnecessary increase in the basic loan rate when grain is moved beyond approved warehouses that have storage space. In some instances, grain pledged as collateral for CCC price support loans and CCC-owned grain move along shipping lines in opposite directions. To assure consistency of grain movement and to better use available warehouse storage space, this proposed rule would amend the regulations at 7 CFR Part 1421 to provide for a more uniform administration of CCC's policies with respect to increasing basic county loan rates to reflect costs incurred in movement of CCC loan collateral. The proposed changes do not delete the authorization which provides for this increased price support rate. Under this proposed rule, however, approval of CCC for the movement of the commodity would have to be obtained by the producer prior to its movement. Such an approval would be made by CCC on Form CCC–678–3, Request for Handling and Transportation Costs.

Loan Grade Requirements

The regulations at 7 CFR Part 1421 currently provide that wheat, feed grains, and soybeans must meet certain grade requirements. In some instances, weather conditions affect the quality of the grain to the extent that current grade requirements cannot be met. Accordingly, in order to provide greater flexibility in determining whether certain commodities are suitable to be pledged as collateral for a CCC price support loan, this proposed rule would revise the grade requirements to provide price support to eligible producers for such commodities under terms and conditions prescribed by CCC. Such terms and conditions would be available at county ASCS offices.

Warehouse Receipt Requirements

Warehouse receipts tendered to CCC with respect to a price support loan or purchase agreement must meet the requirements set forth in 7 CFR Part 1421. Current regulations set forth in 7 CFR Part 1421 provide that the warehouse receipt must show the special grade "weevily" when the commodity is infested with insects. On June 30, 1987, the Federal Grain Inspection Service amended 7 CFR Part 810 redesignating the special grade "weevily" as "infested." *See* 52 FR 24414 (June 30, 1987). Accordingly, this proposed rule would remove "weevily" wherever it appears and insert in lieu thereof "infested."

Certain technical amendments are also proposed for purposes of clarity.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Proposed Rule

Accordingly, it is proposed that 7 CFR Part 1421 be amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR Part 1421 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101, 101A, 105C, 107D, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1395, as amended, 1383, as amended, 63 Stat., 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1441–1, 1444e, 1445b–3, 1446, 1447, 1421, 1423, and 1425).

2. In 7 CFR Part 1421, the Subpart headings to §§ 1421.1 throught 1421.30; §§ 1421.50 through 1421.60; §§ 1421.90 through 1421.100; §§ 1421.210 through 1421.219; §§ 1421.245 through 1421.254; §§ 1421.300 through 1421.312; §§ 1421.335 through 1421.345; §§ 1421.365 through 1421.374; and §§ 1421.460 through 1421.471 are amended by removing "1985" and "1986" wherever they appear and inserting in lieu thereof "1987".

3. In 7 CFR Part 1421, the Subpart heading for §§ 1421.280–1421.291 entitled "1986 Crops Peanut Farm-Stored Loan and Purchase Program" is amended by removing "1986" and inserting in lieu thereof "1987 and Subsequent".

4. 7 CFR Part 1421 is amended by removing the following obsolete Subpart:

Subpart—1972 and Subsequent Crops Flue-Cured Tobacco Farm-Stored Loan Program

(§§ 1421.400–1421.406).

§ 1421.14, 1421.22, 1421.23 [Amended]

5. 7 CFR 1421.14(c) is removed; § 1421.22(j) is removed and paragraph (k) and (l) are redesignated (j) and (k); and § 1421.23(c) is removed, and § 1421.23(d) is redesignated as § 1421.23(c).

6. The first sentence of 7 CFR 1421.1 is revised to read as follows:

§ 1421.1 General statement.

This subpart contains the regulations which set forth the general requirements with respect to price support for the 1987 crop and each subsequent crop of barley, corn, oats, rice, rye, sorghum, soybeans, farm-stored peanuts, and wheat. * * *

§§ 1421.50, 1421.90, 1421.210, 1421.245, 1421.280, 1421.300, 1421.306, 1421.335, 1421.365, 1421.460, 1421.745, 1421.905 [Amended]

7. In 7 CFR Part 1421, §§ 1421.50, 1421.90, 1421.210, 1421.245, 1421.280, 1421.300, 1421.306, 1421.335, 1421.365, 1421.460, 1421.745, and 1421.905 are amended by removing "1978," 1985," or "1986" wherever they appear and inserting in lieu thereof "1987".

8. 7 CFR 1421.3(e) is revised to read as follows:

§ 1421.3 Eligible producers.

* * * * *

(e) *Denial of farm-stored loans.* If the county committee determines that a producer has:

(1) Been convicted of a criminal act, or has made a mispresentation, with respect to:

(i) Acquiring a farm-stored loan or

(ii) In the maintenance of the commodity pledged as security for a farm-stored loan; or

(2) Failed to protect adequately the interests of CCC in the commodity pledged as security for a farm-stored loan, the producer shall be ineligible for subsequent farm-stored loans unless the county committee determines that the producer will adequately protect CCC's interest in the commodity which would be pledged as collateral for such a loan. A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan.

* * * * *

9. 7 CFR 1421.4 (b) and (c) are revised to read as follows:

§ 1421.4 Eligibility requirements.

* * * * *

(b) *Area of availability.* Price support shall be available to eligible producers on barley, corn, oats, rye, sorghum, soybeans, and wheat produced in the United States. Price support shall be available on rice produced only in the continental United States, and price support on farm-stored peanuts shall be available only in the States specified in the regulations applicable to such commodity. Commodities must not have been produced on land owned by the Federal Government and/or individuals or private entities if such land is occupied without lease, permit, or other right of possession.

(c) *Beneficial interest.* (1) Except as provided in paragraph (c)(2) of this section to be eligible for price support, the beneficial interest in the commodity must be with the producer who is pledging the commodity as collateral for a loan or offering the commodity for purchase. In addition, the beneficial interest must always have been with the producer who is tendering the commodity or with such producer and a former producer who was eligible to receive price support with respect to the commodity which is tendered. If the producer tendering the commodity is succeeding a prior producer, the succeeding producer must have acquired the beneficial interest in the commodity prior to the harvest of the commodity, except that heirs who:

(i) Succeed to the beneficial interest of a decreased producer,

(ii) Assume the decedent's obligation under a loan if a loan has already been obtained, and

(iii) Assure continued safe storage of the commodity, if stored on the farm, shall be eligible for price support as producers whether such succession occurs before or after harvest of the commodity.

A producer shall not be considered to have divested the beneficial interest in the commodity if the producer enters into a contract to sell or gives an option to buy the commodity if under the contract or option, the producer retains control, risk or loss and title to the commodity subject to such agreements and retains control of its production. If price support is made available through an approved cooperative marketing association, the beneficial interest in the commodity must always have been in the producer-members who delivered the commodity to the approved cooperative or its member cooperatives or must always have been in them and former producers whom they succeeded before the commodity was harvested, except as provided in the case of heirs of a deceased producer. Commodities so delivered to a cooperative marketing association shall not be eligible for price support if the producer-members who delivered the commodity to the cooperative or its member cooperatives do not retain the right to share in the proceeds from the marketing of the commodity as provided in Part 1425 of this chapter.

(2) Notwithstanding any other provisions of this part, a producer may, in accordance with terms and conditions prescribed by CCC, pledge as collateral for a loan commodities in which the producer does not have a beneficial interest.

* * * * *

10. The third sentence in 7 CFR 1421.6(c) is revised to read as follows:

§ 1421.6 Program availability, disbursement, and maturity of loans.

* * * * *

(c) *Availability and maturity dates.* * * * Loans on commodities other than farm-stored peanuts mature on demand but not later than the last day of the ninth calendar month following the month in which the loan application is made. * * *

11. 7 CFR 1421.8 is revised to read as follows:

§ 1421.8 Applicable forms.

The forms for use in connection with this program shall be prescribed by CCC. The forms may be obtained in State and county ASCS offices.

12. The first sentence in 7 CFR 1421.12(b) is revised to read as follows:

§ 1421.12 Interest rate.

* * * * *

(b) Price support loans which have not been repaid by the maturity date or the original required settlement date for called loans shall bear interest at the same rate of interest which is determined by CCC for the purpose of applying late payment charges to delinquent debts as specified in 7 CFR 1403.5. * * *

13. The second sentence of the introductory text of 7 CFR 1421.15 is amended by removing "will" and inserting in lieu thereof "may" and § 1421.15(b) is revised to read as follows:

§ 1421.15 Loss or damage to the commodity.

* * * * *

(b) The physical loss or damage resulted solely from an extenal cause such as fire which is not the result of improper storage of the commodity; windstorm; or flood. CCC will not assume any loss or damage resulting from insect infestation, rodents, vermin, spontaneous combustion, excessive heat, or theft.

* * * * *

14. 7 CFR 1421.16(c) is revised to read as follows:

§ 1421.16 Personal liability of the producers.

* * * * *

(c) *Poisonous substances and contamination.* A producer shall be personally liable for any damages resulting from delivering to CCC a commodity containing mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

* * * * *

15. 7 CFR 1421.18(c)(3) is removed and § 1421.18(c)(2) is revised to read as follows:

§ 1421.18 Release of the commodity under loan.

* * * * *

(c) * * *

(2) Upon the filing of Form CCC–699, Reconcentration Agreement and Trust Receipt, by the producer and warehouseman, CCC may during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse storage loan. Any such approval shall be subject to the terms and conditions set forth in Form CCC–699, Reconcentration Agreement and Trust Receipt.

* * * * *

16. 7 CFR 1421.19(e) is added to read as follows:

§ 1421.19 Liquidation of farm storage loans.

* * * * *

(e) *Acquired commodities.* Producers may acquire commodities which are not otherwise eligible to be tendered to CCC as collateral for price support loans and surrender such commodities to CCC in lieu of delivering to CCC the commodity pledged as farm-stored loan collateral in accordance with the terms and conditions prescribed by CCC.

17. The third and fourth sentences in 7 CFR 1421.22(a) and 1421.22(c) are revised to read as follows:

§ 1421.22 Settlement.

(a) * * * Settlement shall be made on the basis of the grade, quality, and quantity of the commodity delivered by the producer, except if the collateral is high moisture barley, corn, or grain sorghum, settlement will be determined by using the selling price of the collateral when offered for sale by CCC or as may otherwise be determined by CCC. In the case of farm-stored peanuts, paragraphs (b), (c), and (e) of this section shall not apply. * * *

* * * * *

(c) *Other than approved warehouse storage.* Settlement for barley, corn, oats, rye, sorghum, soybeans, and wheat delivered from other than approved warehouse storage shall be based on:

(1) The applicable support rate for the county in which the producers customary delivery point (as determined by CCC) is located, except that, if the producer is authorized to ship the commodity by rail to a warehouse for storage which is in line with normal trade channels, settlement shall be based on the support rate established for the county from which the commodity was shipped plus the amount of freight charges actually paid and the truck receiving and rail loadout charges by the shipping warehouse, and

(2) The quantity and quality delivered as shown on the warehouse receipts and accompanying documents issued by an approved warehouse to which delivery is made or, if applicable, the quantity and quality delivered as shown on a form prescribed by CCC for this purpose.

* * * * *

18. 7 CFR 1421.51(b) is revised to read as follows:

§ 1421.51 Eligible barley.

* * * * *

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the barley must meet grade requirements as determined by the Executive Vice President, CCC. The grade requirements shall be available in the county ASCS office.

19. In 7 CFR 1421.54(c), the introductory text and paragraph (c)(1) and the first sentence of (e) are revised to read as follows:

§ 1421.54 Warehouse receipts.

* * * * *

(c) *Where warehouse receipt shows "Infested," excess moisture, or both.* If a warehouse receipt tendered as security for a loan indicates that the barley grades "Infested" or contains over 14.5 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate in order for the barley to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(1) When the warehouse receipt shows "Infested" and the barley has been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested" designation and the same grading factors and quantity as shown on the warehouse receipt.

* * * * *

(e) *Freight certificate requirements.* Warehouse receipts representing barley which has been shipped by rail and/or barge must be accompanied by supplemental certificates completed according to § 1421.59(f). * * *

20. 7 CFR 1421.59 (d), (e), and (f) are revised to read as follows:

§ 1421.59 Support rates.

* * * * *

(d) *Basic county support rates for warehouse-stored barley received by rail, barge, or utilizing combination barge-rail rates.* The applicable basic support rate for warehouse-stored loans on barley stored in an approved

warehouse that was received by rail, barge, or combination barge-rail shall be the basic support rate established for the county from which the barley was shipped. The support rate may be further adjusted when barley is moved in accordance with the tems and conditions prescribed by CCC on Form CCC–678–3, Request for Handling and Transportation Costs, Form CCC–699, Reconcentration Agreement and Trust Receipt, or as otherwise determined by CCC.

(e) *Basic county support rates for warehouse-stored barley received by truck or nontariff barge.* (1) The basic county support rate for barley delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the barley is stored, adjusted for premium and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for barley delivered by truck by the producer to (i) an in-line warehouse, or (ii) a warehouse and shipped by truck, barge, or truck-barge to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section.

(3) The support rate may be further adjusted when barley is moved in accordance with terms and conditions prescribed by CCC on Form CCC–678–3, Request for handling and Transportation Costs, Form CCC–699, Reconcentration Agreement and Trust Receipt, or as otherwise determined by CCC.

(f) *Storing responsibilities.* With respect to barley received by rail, barge, or by combination barge-rail, the storing warehouseman shall execute supplemental certificates showing:

(1) The rate of freight paid into the storage point;

(2) The amount of penalty, if any, for backhaul or out-of-line movement;

(3) The applicable normal trade channel market that would be used in commercial channels of trade, and

(4) Any other information which may be prescribed by CCC.

The warehouseman is responsible to CCC for the accuracy or omissions of information on the supplemental certificate. Warehouseman liability, if any, for the failure to comply with the provisions of this paragraph will be determined in accordance with the provisions of the UGSA after acquisition of the warehouse receipt by CCC.

21. 7 CFR 1421.91(c) is revised to read as follows:

§ 1421.91 Eligible corn.

* * * * *

(c) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the corn must meet grade requirements as determined by CCC. The grade requirements shall be available in the county ASCS office.

22. In 7 CFR 1421.94(d), the introductory text of paragraph (d)(1) and paragraph (d)(1)(i) are revised and 7 CFR 1421.94(f) is added to read as follows:

§ 1421.94 Warehouse receipts.

* * * * *

(d) *Where warehouse receipt shows "Infested" excess moisture, or both.* (1) If a warehouse receipt tendered as security for a loan indicates that the corn grades "Infested" or contains over 15.5 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate in order for the corn to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(i) When the warehouse receipt shows "Infested" and the corn has been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested" designation and the same grading factors and quantity as shown on the warehouse receipt.

* * * * *

(f) *Freight certificate requirements.* Warehouse receipts representing corn which has been shipped by rail and/or barge must be accompanied by supplemental certificates completed according to §1421.99(f).

23. 7 CFR 1421.99(d) is revised and 7 CFR 1421.99 (e) and (f) are added to read as follows:

§ 1421.99 Support rates.

* * * * *

(d) *Basic county support rates for warehouse-stored farmer-owned grain (FOR) corn received by rail, barge, or utilizing combination barge-rail rates.* The applicable basic support rate for warehouse-stored FOR loans on corn stored in an approved warehouse that was received by rail, barge, or combination barge-rail shall be the basic support rate established for the county from which the corn was shipped. The support rate may be further adjusted when FOR corn is moved in accordance with the terms and conditions prescribed by CCC on Form CCC–678–3, Request for Handling and Transportation Costs, Form CCC–699, Reconcentration Agreement and Trust Receipt, or as otherwise determined by CCC.

(e) *Basic county support rates for warehouse-stored farmer-owned grain (FOR) corn received by truck or nontariff barge.* (1) The basic county support rate for FOR corn delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the FOR corn is stored, adjusted for premiums and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for FOR corn delivered by truck by the producer to (i) an in-line warehouse, or (ii) a warehouse and shipped by truck, barge, or truck-barge to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section.

(3) The support rate may be further adjusted when FOR corn is moved in accordance with terms and conditions as prescribed by CCC on Form CCC–678–3, Request for Handling and Transpotation Costs, Form CCC–699, Reconcentration Agreement and Trust Receipt or as otherwise determined by CCC.

(f) *Storing responsibilities.* With respect to corn received by rail, barge, or by combination barge-rail, the storing warehouseman shall execute supplemental certificates showing:

(1) The rate of freight paid into the storage point;

(2) The amount of penalty, if any, for backhaul or out-of-line movement;

(3) The applicable normal trade channel market that would be used in commercial channels of trade; and

(4) Any other information which may be prescribed by CCC.

The warehouseman is responsible to CCC for the accuracy or omissions of information on the supplemental certificate. Warehouseman liability, if any, for the failure to comply with the provisions of this paragraph will be determined in accordance with the provisions of the UGSA after acquisition of the warehouse receipt by CCC.

24. 7 CFR 1421.211(b) is revised to read as follows:

§ 1421.211 Eligible sorghum.

* * * * *

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the sorghum must meet grade requirements as determined by CCC. The grade requirements shall be available in the county ASCS office.

25. In 7 CFR 1421.214(d), the introductory text of paragraph (d)(1) and

paragraph (d)(1)(i) and the first sentence of (f) are revised to read as follows:

§ 1421.214 Warehouse receipts.

* * * * *

(d) *Where warehouse receipt shows "Infested" excess moisture, or both.* (1) If a warehouse receipt tendered as security for a loan indicates that the sorghum grades "Infested" or contains over 14.0 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate in order for the sorghum to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(i) When the warehouse receipt shows "Infested" and the sorghum has been conditioned to correct the "infested" condition, the supplemental certificate must show the same grade without the "Infested" designation and the same grading factor and quantity as shown on the warehouse receipt.

* * * * *

(f) *Freight certificate requirements.* Warehouse receipts representing sorghum which has been shipped by rail and/or barge must be accompanied by supplemental certificates completed according to 1421.219(f). * * *

26. 7 CFR 1421.219(d), (e), and (f) are revised to read as follows:

§ 1421.219 Support rates.

* * * * *

(d) *Basic county support rates for warehouse-stored sorghum received by rail, barge, or utilizing combination barge-rail rates.* The applicable basic support rate for warehouse-stored loans on sorghum stored in an approved warehouse that was received by rail, barge, or combination barge-rail shall be the basic support rate established for the county from which the sorghum was shipped. The support rate may be further adjusted when sorghum is moved in accordance with the terms and conditions prescribed by CCC on Form CCC–678–3, Request for Handling and Transportation Costs, Form CCC–699, Reconcentration Agreement and Trust Receipt, or as otherwise determined by CCC.

(e) *Basic county support rates for warehouse-stored sorghum received by truck or nontariff barge.* (1) The basic county support rate for sorghum delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the sorghum is stored, adjusted for premiums and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for sorghum delivered by truck by the producer to (i) an in-line warehouse or (ii) a warehouse and shipped by truck, barge, or truck-barge to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section

(3) The support rate may be further adjusted when sorghum is moved in accordance with terms and conditions as prescribed by CCC on Form CCC–678–3, Request for Handling and Transportation Costs, Form CCC–699, Reconcentration Agreement and Trust Receipt or as otherwise determined by CCC.

(f) *Storing responsibilities.* With respect to sorghum received by rail, barge, or by combination barge-rail, the storing warehouseman shall execute supplemental certificates showing:

(1) The rate of freight paid into the storage point;

(2) The amount of penalty, if any, for backhaul or out-of-line movement;

(3) The applicable normal trade channel market that would be used in commercial channels of trade; and

(4) Any other information which may be prescribed by CCC.

The warehouseman is responsible to CCC for the accuracy or omissions of information on the supplemental certificate. Warehouseman liability, if any, for the failure to comply with the provisions of this paragraph will be determined in accordance with the provisions of the UGSA after acquisition of the warehouse receipt by CCC.

27. 7 CFR 1421.246(b) is revised to read as follows:

§ 1421.246 Eligible oats.

* * * * *

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the oats must meet grade requirements as determined by CCC. The grade requirements shall be available in the county ASCS Office.

28. In 7 CFR 1421.249(c), the introductory text and paragraph (c)(1) are revised and 7 CFR 1421.249(e) is added to read as follows:

§ 1421.249 Warehouse receipts.

* * * * *

(c) *Where warehouse receipt shows "Infested," excess moisture, or both.* If a warehouse receipt tendered as security for a loan indicates that the oats grade "Infested" or contains over 14 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate in order for the oats to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(1) When the warehouse receipt shows "Infested" and the oats have been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested" designation and the same grading factors and quantity as shown on the warehouse receipt.

* * * * *

(e) *Freight certificate requirement.* Warehouse receipts representing oats which has been shipped by rail and/or barge must be accompanied by supplemental certificates completed according to § 1421.254(b).

29. The existing text of § 1421.254 is designated as paragraph (a), a heading is added for newly designated paragraph (a) and a new paragraph (b) is added to read as follows:

§ 1421.254 Support rates.

(a) *Basic county support rates.* * * *

(b) *Storing responsibilities.* With respect to oats received by rail, barge, or by combination barge-rail, the storing warehouseman shall execute supplemental certificates showing:

(1) The rate of freight paid into the storage point;

(2) The amount of penalty, if any, for backhaul or out-of-line movement;

(3) The applicable normal trade channel market that would be used in commercial channels of trade; and

(4) Any other information which may be prescribed by CCC.

The warehouseman is responsible to CCC for the accuracy or omissions of information on the supplemental certificate. Warehouseman liability, if any, for the failure to comply with the provisions of this paragraph will be determined in accordance with the provisions of the UGSA after acquisition of the warehouse receipt by CCC.

* * * * *

30. 7 CFR 1421.311 is revised to read as follows:

§ 1421.311 Maturity of loans and expiration of purchase agreements.

(a) *Loans.* Loans shall mature in accordance with § 1421.6(c).

(b) *Purchase agreements.* Purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved.

31. 7 CFR 1421.336(b) is revised to read as follows:

§ 1421.336 Eligible rye.

* * * * *

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for

a warehouse-stored loan, the rye must meet grade requirements as determined by CCC. The grade requirements shall be available in the county ASCS office.

32. In 7 CFR 1421.339(c), the introductory text and paragraph (c)(1) and the first sentence of (e) are revised to read as follows:

§ 1421.339 Warehouse receipts.

* * * * *

(c) *Where warehouse receipt shows "Infested," excess moisture, or both.* If a warehouse receipt tendered as security for a loan indicates that the rye grades "Infested" or contains over 14 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate in order for the rye to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(1) When the warehouse receipt shows "Infested" and the rye has been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested" designation and the same grading factors and quantity as shown on the warehouse receipt.

* * * * *

(e) *Freight certificate requirements.* Warehouse receipts representing rye which has been shipped by rail and/or barge must be accompanied by supplemental certificates completed according to § 1421.334(f). * * *

33. 7 CFR 1421.344 (d), (e), and (f) are revised to read as follows:

§ 1421.344 Support rates.

* * * * *

(d) *Basic county support for warehouse-stored rye received by rail, barge, or utilizing combination barge-rail rates.* The applicable basic support rate for warehouse-stored loans on rye stored in an approved warehouse that was received by rail, barge, or combination barge-rail shall be the basic support rate established for the county from which the rye was shipped. The support rate may be further adjusted when rye is moved in accordance with the terms and conditions prescribed by CCC on Form CCC–678–3, Request for Handling and Transportation Costs, Form CCC–699, Reconcentration Agreement and Trust Receipt, or as otherwise determined by CCC.

(e) *Basic county support rates for warehouse-stored rye received by truck or nontariff barge.* (1) The basic county support rate for rye delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the rye is stored, adjusted for premiums and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for rye delivered by truck by the producer to (i) an in-line warehouse or (ii) a warehouse and shipped by truck, barge, or truck-barge to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discount as prescribed in paragraph (c) of this section.

(3) The support rate may be further adjusted when rye is moved in accordance with terms and conditions prescribed by CCC on Form CCC–678–3, Request for Handling and Transportation Costs, Form CCC–699,, Reconcentration Agreement and Trust Receipt or as otherwise determined by CCC.

(f) *Storing responsibilities.* With respect to rye received by rail, barge, or by combination barge-rail, the storing warehouseman shall execute supplemental certificates showing:

(1) The rate of freight paid into the storage point;

(2) The amount of penalty, if any for backhaul or out-of-line movement;

(3) The applicable normal trade channel market that would be used in commercial channels of trade; and

(4) Any other information which may be prescribed by CCC.

The warehouseman is responsible to CCC for the accuracy or omissions of information on the supplemental certificate Warehouseman liability, if any, for the failure to comply with the provisions of this paragraph will be determined in accordance with the provisions of the UGSA after acquisition of the warehouse receipt by CCC.

34. 7 CFR 1421.366(b) is revised to read as follows:

§ 1421.366 Eligible soybeans.

* * * * *

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the soybeans must meet grade requirements as determined by CCC. The grade requirements shall be available in the county ASCS office.

35. In 7 CFR 1421.369(d)(1) the introductory text and paragraph (d)(1)(i) are revised to read as follows:

§ 1421.369 Warehouse receipts.

* * * * *

(d) *Where warehouse receipt shows "Infested," excess moisture, or both.* (1) If a warehouse receipt tendered as security for a loan indicates that the soybeans grade "Infested"or contain over 14.0 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate in order for the soybeans to be eligible for price support. The grade, grading factors, and guantity to be delivered must be shown on the supplemental certificate as follows:

(i) When the warehouse receipt shows "Infested" and the soybeans have been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested" designation and the same grading factors and quantity as shown on the warehouse receipt.

* * * * *

36. 7 CFR 1421.461(b) is revised to read as follows:

§ 1421.461 Eligible wheat.

* * * * *

(b) Warehouse-stored loan grade requirements. In order to be eligible for a warehouse-stored loan, the wheat must meet grade requirements as determined by CCC. The grade requirements shall be available in the county ASCS office.

37. In 7 CFR 1421.464(c), the introductory test and paragraph (c)(1) and the first sentence of (e) are revised to read as follows:

§ 1421.464 Warehouse receipts.

* * * * *

(c) *Where warehouse receipt shows "Infested," excess moisture, or both.* If a warehouse receipt tendered as security for a loan indicates that the wheat grades "Infested" or contains over 13.5 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate in order for the wheat to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(1) When the warehouse receipt shows "Infested" and the wheat has been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested" designation and the same grading factors and quantity as shown on the warehouse receipt.

* * * * *

(e) *Freight certificate requirements.* Warehouse receipts representing wheat which has been shipped by rail and/or barge must be accompanied by supplemental certificates completed according to § 1421.470(f). * * *

38. 7 CFR 1421.470(d), (e), and (f) are revised to read as follows:

§ 1421.470 Support rates.

* * * * *

(d) *Basic county support rates for warehouse-stored wheat received by rail, barge, of utilizing combination barge-rail rates.*

The applicable basic support rate for warehouse-stored loans on wheat stored in an approved warehouse that was received by rail, barge, or combination barge-rail shall be the basic support rate established for the county from which the wheat was shipped. The support rate may be further adjusted when wheat is moved in accordance with the terms and conditions prescribed by CCC on Form CCC–678–3, Request for Handling and Transportation Costs, Form CCC–699, Reconcentration Agreement and Trust Receipt, or as otherwise determined by CCC.

(e) *Basic county support rates for warehouse-stored wheat received by truck or nontariff barge.* (1) The basic county support rate for wheat delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the wheat is stored, adjusted for premiums and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for wheat delivered by truck by the producer to (i) an in-line warehouse or (ii) a warehouse and shipped by truck, barge, or truck-barge to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section.

(3) The support rate may be further adjusted when wheat is moved in accordance with terms and conditions prescribed by CCC on Form CCC–678–3, Request for Handling and Transportation Costs, Form CCC–699, Reconcentration Agreement and Trust Receipt or as otherwise determined by CCC.

(f) *Storing responsibilities.* With respect to wheat received by rail or by combination barge-rail, the storing warehouseman shall execute supplemental certificates showing:

(1) The rate of freight paid into the storage point;

(2) The amount of penalty, if any for backhaul or out-of-line movement;

(3) The applicable normal trade channel market that would be used in commercial channels of trade; and

(4) Any other information which may be prescribed by CCC.

The warehouseman is responsible to CCC for the accuracy or omissions of information on the supplemental certificate. Warehouseman liability, if any, for the failure to comply with the provisions of this paragraph will be determined in accordance with the provisions of the UGSA after acquisition of the warehouse receipt by CCC.

Signed at Washington, DC on November 6, 1987.

Milt Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–26949 Filed 11–23–87; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket Nos. H–225, 225A, 225B]

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of intent to file final action.

SUMMARY: The Occupational Safety and Health Administration announces that, for the purposes of 29 CFR 1911.18(d), it intends to officially file in the Office of the Federal Register its final action in its pending rulemaking (50 FR 50412, December 10, 1985) concerning occupational exposure to formaldehyde at 12:00 p.m. on Wednesday, December 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, telephone (202) 523–8151.

Signed at Washington, DC, this 19th day of November, 1987.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87–27044 Filed 11–23–87; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 71008–7208]

Variety Denomination Requirements for Plant Patent Applications; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The following corrections are made in the listing in the preamble of the CFR sections affected in the notice of proposed rulemaking previously published in the **Federal Register** on November 2, 1987 (52 FR 42016). In the preamble, on page 42018, second column, in the first sentence of the paragraph following the list of subjects:

1. Change "1.71" to "1.72."
2. Delete ", 1.163, 1.168."
3. After "1.17" insert "and adding a new § 1.168."

Date: November 18, 1987.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 87–27021 Filed 11–23–87; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 600

[AMS–FRL–325F–7]

Light Truck Fuel Economy Adjustments To Compensate for Test Procedure Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: This notice announces the Environmental Protection Agency's decision to discontinue rulemaking on light truck Corporate Average Fuel Economy (CAFE) adjustments. EPA has determined that CAFE adjustments to compensate for the effects of past test procedure change are not warranted for 1980 and subsequent model year light trucks.

ADDRESS: A copy of a staff paper containing an explanation of EPA's determination in this matter and an analysis of the comments received on the July 1, 1985 Notice of Proposed Rulemaking (NPRM) is contained in Public Docket No. A–85–16 at the U.S. Environmental Protection Agency, Room 4, South Conference Center, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. John M. German, Certification Policy and Support Branch, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668–4214.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1985, EPA published a Notice of Proposed Rulemaking (NPRM) which included proposed CAFE

adjustments for light trucks to compensate for the effects of past test procedure changes on the stringency of CAFE standards under the Energy Policy and Conservation Act. In that NPRM, EPA proposed a methodology to account for the effect of test procedure changes on 1981 and subsequent model years. The NPRM also proposed specific CAFE adjustments to account for changes in test fuel properties and laboratory humidity levels for the 1981 through 1984 model years.

All test procedure change issues raised in the passenger automobile CAFE adjustment rulemaking (50 FR 27172–27187, July 1, 1985) were evaluated in the light truck NPRM (i.e., test fuel properties, laboratory humidity, constant volume samplers, test distance measurement, dynamometer controllers, inertia weight categories, and fuel efficient oils). The NPRM concluded that only the changes in test fuel properties and laboratory humidity were applicable to light trucks. Comments received in response to the NPRM caused EPA to reassess the potential CAFE impact of the baseline model year assumptions and constant volume samplers, and to extend its analysis to include the 1980 model year and the issue of CAFE adjustments for mileage accumulation.

Summary of the Analysis

A complete discussion of EPA's analysis of the test procedure changes mentioned above may be found in the staff paper contained in the docket. In particular, EPA found that the original baseline model year assumptions were overly simplistic and that it is very difficult to associate a single baseline year with each model year's CAFE standard. In addition, the potential CAFE adjustments are relatively small and tend to sum to zero when considered over the model years covered (i.e., 1980 and subsequent model years). Depending on the assumptions used for the baseline model years, the total net CAFE adjustments for the period could range from a small credit (0.70 percent) to a small debit (0.99 percent). Given the margin of error contained in the assumptions used to establish the CAFE standards, the small overall potential adjustments, and the uncertainty of the baseline years, EPA has determined that CAFE adjustments are not warranted for light trucks.

Agency Action

Given EPA's determination that truck CAFE adjustments are not warranted, the Agency has concluded that it is not necessary to make changes to the light truck CAFE regulations to provide adjustments for test procedure changes, as was originally proposed. This notice serves to inform all interested parties of EPA's determination in this matter and to withdraw the NPRM dated July 1, 1985.

Dated: November 17, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87–27001 Filed 11–23–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 63, and 76

[MM Docket No. 84–1296]

Implementation of Provisions of the Cable Communications Policy Act; Extension of Time To File Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending time.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in response to the *Further Notice of Proposed Rule Making* in MM Docket No. 84–1296. This *Notice* requests comments regarding the signal availability measures used in the effective competition standard for cable rate regulation. The Association of Independent Television Stations, Inc., the National League of Cities, the Motion Picture Association of America, the Satellite Broadcasting and Communications Association, and the Massachusetts Community Television Commission requested the extension of time.

DATES: Comments are due December 4, 1987, and reply comments are due December 21, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau (202) 632–6302.

SUPPLEMENTARY INFORMATION:

Adopted: October 22, 1987.
Released: October 28, 1987.
By the Chief, Mass Media Bureau.

1. On April 11, 1985, the Commission adopted a *Report and Order* (*Order*) in MM Docket No. 84–1296, 50 FR 18637 May 2, 1985, amending its rules to implement certain provisions of the Cable Communications Policy Act of 1984, Pub. L. No. 98–549, Section 1 *et seq.*, 98 Stat. 2779 (1984). In this Order, the Commission defined the circumstances and conditions under which cable franchising authorities may regulate the rates charged by cable operators for "basic cable service." As part of this action, the Commission permitted local rate regulation in those circumstances where cable systems do not face "effective competition." The Commission determined that effective competition for a cable system exists where any three off-the-air television signals were available in the cable community.

2. In American Civil Liberties Union v. FCC, Slip op. No. 85–1666 (D.C. Cir., July 17, 1987), the U.S. Court of Appeals ruled that the standard for signal availability in the effective competition test was arbitrary and capricious and remanded the issue to the Commission for a reasoned explanation of the chosen standard or the development of a new standard. As a result of that ruling, the Commission issued a *Further Notice of Proposed Rule Making* (*Notice*) 52 FR 36802, October 1, 1987, to reexamine the signal availability standard currently embodied in the rules. Comment due dates for this *Notice* were set at November 4, 1987, for initial comments and November 19, 1987, for reply comments.

3. On October 20, 1987, the Association of Independent Television Stations, Inc., the National League of Cities, the Motion Picture Association of America, the Satellite Broadcasting and Communications Association, and the Massachusetts Community Antenna Television Commission (Movants) filed a motion for an extension of time in which to file comments in this proceeding. Movants seek additional time to study the record to determine what other information may be necessary to aid the Commission in judging how to further define what is "effective competition" for cable television. Movants specifically request that the due dates for comments and reply comments be extended to December 4, 1987, and December 21, 1987, respectively.

4. We recognize the significance of the effective competition standard in the regulation of the cable industry. Indeed, the standard is central to the determination of whether or not cable rates are regulated by local franchising authorities. Given the importance of this issue to cable operators, cable franchising authorities and the public, and in the interest of obtaining a more complete record in this matter, we believe it would be beneficial to provide the additional time sought by the Movants. Thus, we will extend the filing dates for comments and reply comments as requested.

5. Accordingly, it is ordered that the date for filing comments and reply comments in respons to the above-referenced *Further Notice of Proposed Rule Making* are extended to December 4, 1987, and December 21, 1987, respectively. This action is taken pursuant to authority provided in section 4(i) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's rules.

6. For further information concerning this proceeding, contact Judith Herman, Mass Media Bureau, (202) 632-6302.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 87-26960 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 43

[FCC 87-353]

Common Carrier Services; Amortization of Depreciation Reserve Imbalances of Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed amortization action.

SUMMARY: The Commission invites comments on what action it should take with respect to requests filed by carriers in 1986 for amortization of their reserve deficiencies. In two orders released in early 1987, the Commission granted some of the requests and denied others, depending on whether the carrier had the concurrence of its state regulatory commission. At the Commission's request, the Court of Appeals remanded the cases to allow the Commission to more fully consider objections to the manner in which the requests were resolved. The Commission invites comment on whether the actions should be reversed, and, if so, what steps should be taken to implement such reversals.

DATES: Comments are due by November 25, 1987, and reply comments by December 9, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert W. Spangler, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Order Inviting Comments, FCC 87-353 (adopted November 4, 1987 and released November 6, 1987). The full text of the FCC's decision is available for inspection and copying during normal business hours in the Accounting and Audits Division Reference Room, Room 812, 2000 L Street, NW., Washington, DC. The complete text of this document may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Order Inviting Comments

The Commission invites comments on what action should be taken with respect to requests for amortization addressed in two Orders adopted in 1986. In the *1986 Depreciation Rates Order*, 2 FCC Rcd 610, the Commission prescribed revised depreciation rates for 12 carriers pursuant to the regular three-year review of the rates of larger carriers. In the 1986 *Annual Updates Order*, 2 FCC Rcd 842, the Commission prescribed depreciation rates for carriers which requested an update of earlier prescriptions. In both orders, the Commission granted the requests of some carriers for amortization of their reserve deficiencies, but denied requests of other carriers. The request was denied if the carrier's state regulatory commission did not concur in the amortization. In the *1986 Annual Updates Order*, the Commission also denied Pacific Bell's petition for reconsideration of an earlier order which denied its amortization request because of its failure to obtain state regulatory concurrence. Both orders were appealed to the United States Court of Appeals. At the Commission's request, the Court remanded the cases so that further comments could be considered.

The Commission invites comments on whether it should reverse any of the actions taken in the 1986 orders, and, should it do so, the steps which should be taken to implement such reversals. Commenters should also identify and discuss any difficulties that could arise from such implementation. For example, the affected carriers may have already closed their books for some of the periods affected by the 1986 orders, and rates that have been in effect may reflect the approved amortizations. The Commission also invites comments on Western Union's 1986 comments, in which it asserted that reliance on state concurrence was an improper delegation of the Commission's responsibilities to the states.

The Commission also invites comments on how adoption of the Commission's *Amortization NPRM*, FCC 87-313 (released October 5, 1987) could affect possible outcomes of this proceeding. That proceeding rates several timing issues in this proceeding, because the Commission has proposed a uniform five-year amortization of the depreciation reserve deficiency of a carriers for which amortization has not been approved. Comments are invited on whether, if we decide to prescribe amortizations herein, we should use the same five-year period, or represcribe the shorter amortizations earlier approved. Comments are also invited on the date when a new amortization should begin, what action to take if a new amortization is approved after a carrier has closed its books for an affected period, and whether there are any factors which would warrant disparate treatment of the 1986 carriers compared with those which could be affected by the *Amortization NPRM*. Finally, comment is invited on what actions the Commission should take with respect to the carriers denied amortization authority in the 1986 orders if the Commission does not adopt the proposal in the *Amortization NPRM*.

For purposes of this non-restricted proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See* § 1.1200 *et seq.* of the Commission's rules, 47 CFR 1.1200 *et seq.*, for rules governing permissible *ex parte* contacts.

In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the *Memorandum Opinion and Order*.

Interested parties may file comments on the specific proposals discussed herein by the dates specified in the Preamble. In accordance with the provisions of § 1.419 of the Commission's rules, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the comments will be available for public inspection in the Reference Room of the Accounting and Audits Division, 2000 L Street, NW, Room 812, Washington, DC.

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 87-26962 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-506, RM-5850]

Radio Broadcasting Services; Apache Junction, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Beta Communications, Inc., proposing the substitution of FM Channel 296C2 for Channel 296A at Apache Junction, Arizona, and modification of the license of Station KSTM(FM) accordingly, to provide that community with its first wide coverage area FM service.

DATES: Comments must be filed on or before January 7, 1988, and reply comments on or before January 22, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Stanley B. Cohen and J. Brian De Boice, Esqs., Cohn and Marks, Suite 600, 1333 New Hampshire Ave., NW., Wash., DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-506 adopted October 30, 1987, and released November 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-26970 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-507, RM-5997]

Radio Broadcasting Services; Mountain Home, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain Valley Broadcasting, licensee of Station KJCY(FM), Mountain Home, Idaho, proposing to substitute Class C Channel 256 for Channel 257A at Mountain Home, and to modify its license to specify the new channel.

DATES: Comments must be filed on or before January 7, 1988, and reply comments on or before January 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mr. Jack Jensen, General Manager, Mountain Valley Broadcasting, P.O. Box 704, Mountain Home, Idaho 83647-0704.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-507, adopted October 30, 1987, and released November 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-26973 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-508, RM-5856]

Radio Broadcasting Services; Ida Grove, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Buena Vista College, licensee of Station KIDA(FM), Channel 224A, Ida Grove, Iowa, proposing to allot Channel 225C2 to Ida Grove and modify its license to specify operation on Channel 225C2.

DATES: Comments must be filed on or before January 7, 1988, and reply comments on or before January 22, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Randy Flink, Buena Vista College, KIDA-FM 93, 218 Main Street, Ida Grove, Iowa 51445 (Petitioner); Susan Wing, Esq., Hogan & Hartson, 615 Connecticut Avenue, NW., Washington, DC 20006 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-508 adopted October 30, 1987, and released November 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-26972 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-493, RM-5912]

Radio Broadcasting Services; Columbia and Fulton, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule and order.

SUMMARY: This document requests comments on a petition by Contemporary Broadcasting, Inc. to substitute FM Channel 252C2 for 252A at Columbia, Missouri, and modify the license of Station KFMZ (FM), Columbia, to specify operation on the proposed higher class channel. In addition, we propose to substitute Channel 263A for Channel 249A at Fulton, Missouri, and to modify the license of Station KKCA (FM), Fulton, to specify operation on Channel 263A. This document further orders the licensee of Station KKCA to show cause why its license should not be modified.

DATE: Comments must be filed on or before January 4, 1988, and reply comments on or before January 19, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard J. Braun, Esquire, Fly, Shebruk, Gaguine, Boros and Braun, 1211 Connecticut Avenue, NW., Washington, DC 20036 (counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 87-493, adopted October 14, 1987, and released November 19, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-27027 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-509, RM-6056]

Radio Broadcasting Services; Lisbon, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Montpelier Broadcasting, Inc. proposing the allocation of Channel 244A to Lisbon, New Hampshire, as the community's first local FM service. Channel 244A can be allocated to Lisbon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence is required since Lisbon is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before January 7, 1988, and reply comments on or before January 22, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry A. Friedman, Esq., Michael Drayer, Esq., Wilner & Scheiner, 1200 New Hampshire Ave., NW., Suite 300, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-509, adopted October 30, 1987, and released November 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-26969 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-510, RM-6057]

Radio Broadcasting Services; Canton, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Craig L. Fox proposing the allocation of Channel 268A to Canton, New York, as the community's second local FM service. Channel 268A can be allocated to Canton in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.3 kilometers (4.5 miles) southeast. Canadian concurrence in the allocation is required.

DATES: Comments must be filed on or before January 7, 1988, and reply to comments on or before January 22, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Craig L. Fox, 1213 Madison Street, Syracuse, New York 13210-2027 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-510, adopted October 30, 1987, and released November 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-26974 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-512, RM-6038]

Radio Broadcasting Services; Beaver, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by McAlester Broadcasting Systems of Utah, Ltd., proposing the allotment of Channel 284C2 to Beaver, Utah, as that community's first FM service.

DATES: Comments must be filed on or before January 8, 1988, and reply comments on or before January 25, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr., Esquire, 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-512, adopted November 2, 1987, and released November 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-26964 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-126; RM-5570]

Radio Broadcasting Services; Bradford, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by David N. Tucker, proposing the allotment of Channel 249A to Bradford, Vermont, as that community's first FM service, due to lack of an expression of interest. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-126, adopted November 2, 1987 and released November 19, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-27028 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-130; RM-5669]

Radio Broadcasting Services; Wells River, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Puffer Broadcasting, Inc., licensee of AM Station WYKR, Wells River, Vermont, proposing the allotment of Channel 229A to Wells River, as a first FM service. This action is taken at the request of the petitioner. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-130, adopted November 2, 1987 and released November 19, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-27029 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 226
Tuesday, November 24, 1987

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 COMMERCE

Foreign-Trade Zones Board

[Docket No. 33-87]

Foreign-Trade Zone 17, Kansas City, KS; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 17, requesting authority to expand the zone to include 2 sites in Kansas City, Kansas, within the Kansas City Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 10, 1987.

The expansion would involve two privately-owned sites with a total of some 300,000 sq. ft. of warehouse space. One site would involve 220,000 sq. ft. of a 382,000 sq. ft. warehouse located 5203 Speaker Rd., Kansas City, which is operated by Customized Transportation, Inc. The second requested site contains 75,000 sq. ft. of warehouse space on a six-acre site at 30 Funston Rd. It will be operated by International Transit and Storage Corporation. No approvals for manufacturing are being sought at this time.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Theodore Galantowicz, District Director, U.S. Customs Service, North Central Region, 7911 Forsyth Blvd., Suite 625, Clayton, MO 63105; and Colonel John Atkinson, District Engineer, U.S. Army Engineer District Kansas City, 700 Federal Bldg., 601 E. 12th St., Kansas City, MO 64106-2896.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 4, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 601 East 12th St., Room 635, Kansas City, MO 64106

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW, Room 1529, Washington, DC 20230.

Dated: November 18, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-27022 Filed 11-23-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 34-87]

Foreign-Trade Zone 29, Louisville, KY; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Louisville and Jefferson County Riverport Authority (Riverport Authority), grantee of Foreign-Trade Zone 29, requesting authority to expand the zone in Jefferson County, adjacent to the Louisville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 16, 1987.

The existing zone, approved in May 1977, covers a 12-acre site within the 1,700-acre Riverport Industrial Complex. The expansion would embrace 1,307 additional acres within the industrial complex, and add a 675-acre site located at the junction of the Gene Snyder Freeway and LaGrange Road in eastern Jefferson County. The latter site is owned by the Jefferson County Economic Redevelopment Corporation. No approvals for manufacturing have been requested.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Bldg., 55 Erieview Plaza, Cleveland, OH 44114; and Colonel Robert L. Oliver, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, Kentucky 40201-0059.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 7, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Gene Snyder Courthouse and Customhouse Bldg., Room 636 B, 601 West Broadway, Louisville, KY 40202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Room 1529, Washington, DC 20230.

Dated: November 19, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-27023 Filed 11-23-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-703]

Preliminary Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain internal-combustion, industrial forklift trucks (forklifts) from Japan are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances exist with respect to certain imports of forklifts from Japan. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend

liquidation of all entries of forklifts from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by February 1, 1988.

EFFECTIVE DATE: November 24, 1987.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–0187 or 377–0161.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that forklifts from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances exist with respect to certain imports of forklifts from Japan.

Case History

Since our notice of initiation (52 FR 18588, May 18, 1987), the following events have occurred. On June 19, 1987, the ITC determined that there is a reasonable indication that a U.S. industry is materially injured by reason of imports of forklifts from Japan (52 FR 23725, June 24, 1987).

On June 12, 1987, we received a letter from Clark Equipment Company (Clark), a party to the proceeding, requesting that the Department expand the scope of this investigation to include electric forklift trucks. We have determined that electric forklift trucks are a different class or kind of merchandise than the internal-combustion forklift trucks under investigation. On July 24, 1987, we sent a letter to Clark informing them of our decision and denying their request.

On June 17, 1987, we presented antidumping duty questionnaires to Toyota Motor Corp. (Toyota), Nissan Motor Co., Ltd. (Nissan), Komatsu Forklift Co., Ltd. (Komatsu), and Sumitomo-Yale (Sumitomo), which account for a substantial portion of exports of forklifts from Japan to the United States during the period of investigation. On July 1, 1987, we presented a questionnaire to Toyo Umpanki Co., Ltd. (TCM).

Petitioners requested that we specifically look at certain sales by Japanese resellers or trading companies of new forklifts that may have been operated for only a few hours and then sold as used at a discount to customers in the United States. Thus, on August 15, 1987, we presented a questionnaire to Sanki Industrial Co., Ltd. (Sanki), and on August 27, 1987, we presented a questionnaire to Kasagi Forklift, Inc. (Kasagi), two resellers of Japanese forklifts in the United States.

We received responses to these questionnaires from all companies except Kasagi. After reviewing the responses, we sent out deficiency questionnaires and received supplemental responses from Toyota, Nissan, Komatsu, Sumitomo, TCM, and Sanki. Additional deficiency letters were sent to respondents during August, September, October, and November. Responses to many, but not all, deficiency letters were received by the Department prior to this determination.

On August 21, 1987, petitioners requested a postponement of the preliminary determination. On September 8, 1987, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until October 29, 1987 (52 FR 34399, September 11, 1987). On October 2, 1987, petitioners requested an additional postponement of the preliminary determination, and on October 7, 1987, we further postponed the preliminary determination until November 18, 1987 (52 FR 38113, October 14, 1987).

Between November 5 and 17, 1987, petitioners alleged that Komatsu's, TCM's, Sumitomo's, Nissan's and Toyota's home market sales of forklifts were being made at prices that were below their costs of production. Given the timing of the filing of these allegations, we were unable to consider them for this preliminary determination. We will address these allegations in our final determination.

Scope of Investigation

The United States has developed a system of tariff classifications based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS) by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description of the products under investigation remains dispositive.

We are requesting that petitioners include the appropriate HS item number(s) as well as the TSUSA item numbers(s) in all petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 lbs., currently provided for under TSUSA items 692.4025, 692.4030, and 692.4070, and currently classifiable under HS item numbers 8427.20.00–0, 8427.90.00–0, and 8431.20.00–0. The products covered by this investigation are further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. We understand that the frame by itself is the identifying feature and principal component part of the product, and is solely dedicated for the manufacture of a complete internal-combustion, industrial forklift truck.

Used Forklift Issue

Petitioners and several other interested parties have stated that genuinely "used" forklifts should not be included within the scope of this investigation and have submitted suggestions on how the Department can distinguish new and used forklifts. For purposes of this preliminary determination, we are considering any forklift to be used if, at the time of entry into the United States, the importer can demonstrate to the satisfaction of the U.S. Customs Service that the forklift was manufactured at least three years prior to the date of entry. If the U.S. Customs Service agrees with an importer's contention that the forklift is used, it will not be subject to the suspension of liquidation. We shall continue to consider this issue for our final determination and invite interested parties to submit comments on how we

can further distinguish new and used forklifts.

Period of Investigation

It is our understanding that sales of forklifts may often involve significant after-sale price adjustments. In order to capture all after-sale price adjustments on sales of forklifts from Japan to the United States, we chose as the period of investigation the six months from August 1, 1986, through January 31, 1987, as permitted by 19 CFR 353.38(a).

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Act, we established four categories of "such or similar" merchandise on the basis of load (lifting) capacity of the forklift (*i.e.*, 2,000–3,000 lbs.; 3,001–5,999 lbs.; 6,000–9,999 lbs.; 10,000–15,000 lbs.). Within these categories, we based our product comparisons on 12 primary characteristics. These are load capacity, tire type, upright style, engine type, transmission type, maximum fork height, engine size, carriage type, fork arm type, hose reel, hydraulic control valve, and fork arm length. Where there was no identical product in the home market with which to compare a product imported into the United States, we selected the most similar product on the basis of the 12 characteristics listed above.

In order to determine whether there were sufficient sales of forklifts in the home market to serve as the basis for calculating foreign market value, we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Act. We preliminarily determine that for each respondent there were sufficient home market sales to unrelated customers or arm's-length sales to related customers for each such or similar category to form an adequate basis for comparison to the forklifts imported into the United States.

Fair Value Comparisons

To determine whether sales of forklifts from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. Where a company has failed to respond to our questionnaire, in accordance with section 776(b) of the Act, we have determined that it is appropriate for this preliminary determination to assign that company the higher of either (1) the rate calculated from information supplied in the petition, or (2) the rate for the respondent with the highest margin of all respondents that supplied adequate responses. Using this methodology for Kasagi, which failed to answer our questionnaire, we applied, as best information available, the highest rate alleged in the petition.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

For sales made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate indicator of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was a customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all of the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each respondent is detailed below.

A. *Toyota:* We calculated purchase price and ESP based on the packed, c & f, c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight, foreign inland insurance, export brokerage, ocean freight, marine insurance, import brokerage, U.S. duty, U.S. inland freight, and U.S. inland insurance, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for credit expenses, warranties, advertising, service payments to dealers, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act. For ESP transactions involving further manufacture prior to sale in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act.

Toyota calculated the credit expense on ESP transactions based on the actual number of days from invoice date to payment date and the gross unit price of the forklift. We recalculated Toyota's credit expense based on the actual number of days from shipment date to payment date and the unit price net discounts.

Toyota neglected to include in its calculation of inventory carrying costs on ESP transactions the average time period from the date the forklift leaves the manufacturer's production lines to the date of importation into the United States. We recalculated inventory carrying costs to include an additional 45 days, based on information submitted by petitioners.

Toyota claimed a deduction from ESP for commissions paid to dealers for the sale of forklifts to end-users. Since these commissions are tantamount to post-sale rebates, we treated them as such.

B. *Nissan:* We calculated ESP based on the packed, c.i.f. and delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for foreign inland freight, foreign inland insurance, shipping charges, invoice preparation fees, ocean freight, marine insurance, U.S. duty, import brokerage, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for credit expenses, technical services, warranties, advertising, service payments to dealers, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

We requested that Nissan submit revised data on its value-added operations in the United States so that we can adjust ESP for the increase in value resulting from any further manufacture or assembly, pursuant to section 772(e)(3) of the Act. We did not receive this data in time for use in this preliminary determination. Therefore, in order to perform this adjustment, we used, as best information available, the data contained in an earlier Nissan submission. If we are unable to verify the revised data, we will continue to use

best information available to calculate the United States price in our final determination. However, best information available for purposes of the final determination may be different from the information used for this preliminary determination.

Nissan calculated the U.S. credit expense based on the gross unit price of the forklift. Nissan reported the total credit expense from the date of shipment to the date of payment, net the amount of interest which Nissan charged its customers for late payment. We recalculated the U.S. credit expense based on the unit price net discounts, and only up to the date on which Nissan began to charge its customers interest.

C. *Komatsu:* We calculated purchase price and ESP based on the packed, f.o.b., c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight, foreign inland insurance, export brokerage, ocean freight, marine insurance, import brokerage, U.S. duty, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for credit expenses, warranties, advertising, service payments to dealers, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act. For ESP transactions involving further manufacture prior to sale in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act.

Komatsu calculated the U.S. credit expense based on the gross unit price of the forklift. Komatsu reported the total credit expense from the date of shipment to the date of payment, net the amount of interest which Komatsu charged its customers for late payment. We recalculated the U.S. credit expense based on the unit price net discounts, and only up to the date on which Komatsu began to charge its customers interest.

D. *Sumitomo:* We calculated the packed purchase price, and ESP, based on c.i.f. and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for brokerage and handling, foreign inland freight, containerization, foreign inland insurance, ocean freight, marine insurance, U.S. duty, and draft guarantee insurance, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates.

We made further deductions from ESP, where appropriate, for credit expenses, warranties, advertising, commissions, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act. For ESP transactions involving further manufacture prior to sale in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act.

Information submitted in a supplemental response on November 3, 1987, indicates that Sumitomo paid a fee to an export trading company for the preparation of export documents and the scheduling of shipments. Because this is a charge incurred on shipments to the United States, we deducted this charge from purchase price and ESP.

Information submitted in a supplemental response on November 6, 1987, indicates that Sumitomo incurred a charge for foreign inland insurance on ESP transactions. Because this charge was not reported in the computer data base, we deducted the highest amount reported for foreign inland insurance incurred by Sumitomo on purchase price sales, as best information available.

Sumitomo calculated credit expenses on purchase price sales based on an inappropriate interest rate. We recalculated credit expenses on purchase price sales using Sumitomo's short-term weighted-average actual borrowing rate for the review period. Sumitomo calculated credit expenses on ESP sales based on the list price. We recalculated credit expenses on ESP sales based on the list price net discounts.

E. *TCM:* We calculated purchase price and ESP based on the packed, c.i.f. and delivered prices to unrelated customers in the United States. On October 27, 1987, TCM submitted both a revised product concordance and ESP sales listing. TCM subsequently submitted two additional revisions to its ESP sales listing on November 2 and 12, 1987. The November 12 revision was not received in time to be used for this determination, and neither it nor the November 2 submission were accompanied by revised product concordances. Therefore, for purposes of this determination, as best information available, we used TCM's October 27 product concordance and its November 2 ESP sales listing.

We made deductions from purchase price and ESP, where appropriate, for foreign inland freight, containerization, export brokerage, trading company markup, ocean freight, marine insurance, import brokerage, U.S. duty, U.S. inland freight, and U.S. inland insurance, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for credit expenses, warranties, service payments to dealers, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act. For ESP transactions involving further manufacture prior to sale in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act.

TCM calculated export brokerage and foreign inland freight based on a standard weight for each model. We recalculated these charges based on the actual shipping weight of each unit.

TCM calculated the U.S. credit expense based on the gross unit price of the forklift. We recalculated the credit expense based on the unit price net discounts. In addition, for sales made on an installment basis, TCM calculated the U.S. credit expense based on the future value of the forklift. We recalculated the credit expense for these sales based on net present value.

F. *Sanki:* We calculated purchase price based on the c.i.f. prices to unrelated customers in the United States. We made deductions from purchase price, where appropriate, for foreign inland freight, export brokerage, ocean freight, and marine insurance, in accordance with section 772(d)(2) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales and, where appropriate, constructed values. The calculation of foreign market value for each respondent is detailed below.

A. *Toyota:* We calculated foreign market value based on the c & f and f.o.b. prices to unrelated and related customers in the home market. We requested that Toyota report its sales to unrelated dealers and sales by its related dealers to their unrelated customers. Toyota argued that the prices charged its related and unrelated dealers in the home market were comparable, and that we should allow them to report only their sales to related and unrelated dealers. We agreed to allow Toyota to report only its sales to related and unrelated dealers. In a letter to them, we specified that if we did not find the prices to the related and unrelated dealers to be comparable, we might have to use best information available to calculate foreign market value. For purposes of this preliminary determination, we included sales to related customers, pursuant to 19 CFR 353.22(b), since we preliminarily

determine that the prices paid by those customers were comparable to the prices paid by unrelated customers for such or similar merchandise. If we are unable to ascertain at verification that Toyota's prices to its related and unrelated customers in the home market are comparable, we will use best information available to calculate foreign market value in our final determination.

We made deductions from the home market price, where appropriate, for inland freight and rebates. Since no packing costs were claimed on home market sales, we added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses, warranties, and advertising, pursuant to 19 CFR 353.15. For comparisons involving ESP transactions, we made further deductions from the home market price, where appropriate, for credit expenses, warranties, and advertising, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). We made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Toyota calculated the home market credit expense based on the actual number of days from invoice date to payment date. We recalculated Toyota's credit expense based on the actual number of days from shipment date to payment date.

Toyota claimed an adjustment for temporary exchange rate fluctuations. We disallowed this adjustment under 19 CFR 353.56(b) since the movement in the exchange rate is part of a sustained change in the rate and not a temporary fluctuation.

Toyota claimed a deduction from the home market price for an incentive paid to dealers to promote sales of old forklift models to make way for the newest models. We disallowed this deduction because this incentive relates to sales that fall outside the period of investigation.

Toyota claimed home market technical service expenses as a direct selling expense. We treated these expenses as indirect selling expenses since they are incurred regardless of whether a sale is made. Toyota also claimed, as a direct selling expense, an adjustment to the home market price for a computerized customer management system. We disallowed this adjustment since this program was not used for the promotion of sales of the merchandise under investigation.

Toyota claimed, as an indirect selling expense, discounts on sales of demonstration vehicles. We disallowed this expense since these discounts are directly tied to the sale of demonstration vehicles, and these demonstration vehicles were determined not to be similar to the merchandise under investigation. Toyota also claimed, as an indirect selling expense, certain advertising costs associated with a soccer cup competition sponsored by Toyota. We disallowed this adjustment since these expenses were incurred outside the period of investigation.

B. *Nissan:* We calculated foreign market value based on delivered prices to unrelated and related customers in the home market. We requested that Nissan report its sales to unrelated dealers and sales by its related dealers to their unrelated customers. Nissan argued that the prices charged its related and unrelated dealers in the home market were comparable, and that we should allow them to report only their sales to related and unrelated dealers. We agreed to allow Nissan to report only its sales to related and unrelated dealers. In a letter to them, we specified that if we did not find the prices to the related and unrelated dealers to be comparable, we might have to use best information available to calculate foreign market value. For purposes of this preliminary determination, we included sales to related customers, pursuant to 19 CFR 353.22(b), since we preliminarily determine that the prices paid by those customers were comparable to the prices paid by unrelated customers for such or similar merchandise. If we are unable to ascertain at verification that Nissan's prices to its related and unrelated customers in the home market are comparable, we will use best information available to calculate foreign market value in our final determination.

Nissan selected its such or similar comparisons based on the characteristics of the final product sold in the United States after further manufacture or assembly, rather than on the product as imported into the United States. Nissan submitted a revised concordance based on the products as imported, but we did not receive it in time for use in this preliminary determination. Therefore, we used the best information available to calculate foreign market value. Because Nissan's reported level of value-added in the United States is relatively low, we used Nissan's original concordance as best information available for this determination. If we are unable to verify the revised data, we will continue to use best information available to calculate foreign market value in our final determination. However, best information available for purposes of the final determination may be different from the information used for this preliminary determination.

We made deductions from the home market price, where appropriate, for inland freight, and discounts and rebates. Since no packing costs were claimed on home market sales, we added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. We made further deductions from the home market price, where appropriate, for credit expenses, warranties, advertising, incidental warranty-type expenses, and indirect selling expenses, in accordance with 19 CFR 353.15(c). We made adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Nissan calculated the home market credit expense based on the gross unit price of the forklift. Nissan reported the total credit expense from the date of shipment to the date of payment, net the amount of interest which Nissan charges its customers for late payment. We recalculated the home market credit expense based on the unit price net discounts, and only up to the date on which Nissan began to charge its customers interest.

Nissan claimed a deduction from the home market price for expenses incurred with respect to the remodeling of forklifts in inventory to match dealer specifications. We disallowed this deduction because we consider such expenses to be fabrication costs. Nissan also claimed a deduction from the home market price for certain payments made to dealers with respect to service vans, demonstration vehicles, facility improvements, and profit/loss ratios. We disallowed this deduction because we do not consider such payments to be selling expenses. In addition, Nissan claimed home market technical service expenses as a direct selling expense. Since the amount reported includes certain indirect selling expenses which could not be broken out, we treated the total amount reported as an indirect selling expense.

C. *Komatsu:* We calculated foreign market value based on delivered prices to unrelated customers in the home market. We found certain discrepancies between the product comparisons

selected by Komatsu and those we selected. Komatsu submitted a revised concordance based on the product comparisons we selected, but we did not receive it in time for use in this preliminary determination. Therefore, we used the best information available to calculate foreign market value. Due to the limited size of the discrepancies between the two concordances, we used Komatsu's original concordance as best information available for this determination. If we are unable to verify the revised data, we will continue to use best information available to calculate foreign market value in our final determination. However, best information available for purposes of the final determination may be different from the information used for this preliminary determination.

We made deductions from the home market price, where appropriate, for inland freight and insurance. Since no packing costs were claimed on home market sales, we added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses, technical services, warranties, advertising, pre-delivery inspections, and service payments to dealers, pursuant to 19 CFR 353.15. For comparisons involving ESP transactions, we made further deductions from the home market price, where appropriate, for credit expenses, technical services, pre-delivery inspections, and indirect selling expenses, in accordance with 19 CFR 353.15(c). We made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Komatsu calculated the credit expense in both markets based on the gross unit price of the forklift. In addition, Komatsu reported the U.S. credit expense from the date of shipment to the date of payment, net the amount of interest which Komatsu charges its customers for late payment. We recalculated the credit expense in both markets based on the unit price net discounts and trade-in allowances. In addition, we recalculated the U.S. credit expense only up to the date on which Komatsu began to charge its customers interest.

Komatsu claimed home market warranty expenses as a direct selling expense. Since the amount reported includes employee salaries which could not be broken out, we treated the total amount reported as an indirect selling expense. Komatsu also claimed home market advertising expenses as a direct selling expense. Since these expenses were directed at the first-level customer, we treated these expenses as an indirect selling expense.

In addition, Komatsu claimed a level of trade adjustment to compensate for differences in levels of trade existing between the U.S. and home markets in sales of forklifts. Pursuant to 19 CFR 353.19, we disallowed this adjustment because Komatsu has not established that it experienced actual differences in selling costs associated with sales at different levels of trade in the U.S. and home markets.

D. *Sumitomo:* For certain products, we calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, delivery fees, finder's fees, and discounts. Since no packing costs were claimed on home market sales, we added U.S. packing to the home market price for comparison to purchase price sales, in accordance with section 773(a)(1) of the Act.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses, warranties, and advertising, pursuant to 19 CFR 353.15. For comparisons involving ESP transactions, we made further deductions from the home market price, where appropriate, for credit expenses, warranties, and indirect selling expenses, in accordance with 19 CFR 353.15(c). To the extent sufficient data was available, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Sumitomo improperly calculated home market credit expenses. We recalculated Sumitomo's credit expenses using: (1) The gross unit price net trade-in allowances and discounts; (2) Sumitomo's short-term weighted-average actual borrowing rate during the review period; and (3) either the actual number of days from shipment date to payment date or the maximum number of days for which credit is normally extended in the home market.

Sumitomo calculated its home market inventory carrying costs based on an inappropriate interest rate. We recalculated this expense based on Sumitomo's short-term weighted-average actual borrowing rate during the review period.

We used constructed value as the basis for calculating the foreign market value when: (1) The ratio of the adjustment for the difference in physical characteristics to the net home market selling price was so substantial as to render it inappropriate to consider the home market merchandise "similar" to the U.S. merchandise, or (2) when no difference in merchandise information was provided for the models we selected as most similar. Constructed value was calculated in accordance with section 773(c) of the Act and was based on the respondent's information, except as noted below:

1. The cost of manufacturing was revised to include a percentage write-off of obsolete inventory.

2. The general expenses, which included the home market selling expenses, were adjusted to include interest expense based on the expense as a percentage of its cost of sale.

In accordance with section 773(e)(1)(B)(i) of the Act, we used the statutory minimum of ten percent for general expenses because the actual general expenses reported by Sumitomo were less than the statutory minimum. In accordance with section 773(e)(1)(B)(ii) of the Act, we used the statutory minimum profit of eight percent when the actual profit reported by Sumitomo for a particular such or similar category of merchandise was less than the statutory minimum.

Constructed value was used only in comparisons involving ESP transactions. Thus, we deducted from constructed value home market direct selling expenses and indirect selling expenses up to the amount of indirect selling expenses incurred for the U.S. sale.

E. *TCM:* We calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight and rebates. Since no packing costs were claimed on home market sales, we added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. We made an adjustment to the home market price for commissions, in accordance with 19 CFR 353.15(c).

For comparisons involving purchase price sales, we made additional adjustments to the home market price, where appropriate, for differences in credit expenses, warranties, and quality control inspections, pursuant to 19 CFR 353.15. For comparisons involving ESP transactions, we made additional deductions from the home market price, where appropriate, for credit expenses, warranties, and quality control

inspections; and we made an additional adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). We made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

TCM calculated the credit expense in both markets based on the gross unit price of the forklift. We recalculated the credit expense based on the unit price net trade-in allowances.

TCM claimed a deduction from the home market price for its forgiveness of interest to related dealers. We disallowed this deduction since we consider this to be merely a paper transfer of liability based on the relationship of the parties involved.

F. *Sanki:* For certain products, we calculated foreign market value based on the delivered price to an unrelated customer in the home market. No deductions or adjustments were claimed; therefore, none were made.

We used constructed value as the basis for calculating foreign market value when there were no forklifts reported that were identical to the U.S. product with respect to the 12 primary characteristics. This was done because no difference in merchandise information was provided. Constructed value was calculated in accordance with section 773(e) of the Act. Given that Sanki is a reseller of forklifts, as best information available, we considered the cost of manufacturing to be equal to Sanki's acquisition cost of the forklift. Because Sanki did not report any SG&A expenses or profit, we used the statutory minima of ten and eight percent, respectively, in accordance with 19 CFR 353.6(a)(2).

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On October 27, 1987, petitioners alleged that "critical circumstances" exist with respect to imports of forklifts from Japan. Under section 733(e)(1) of the Act, critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B) of the Act, we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by imports. Based on our analysis of import statistics, we find that there is a reasonable basis to believe or suspect that imports of forklifts from Japan have been massive over a relatively short period. Therefore, we find that the requirements of section 733(e)(1)(B) are met.

We examined recent antidumping duty cases and found that there are currently no findings in the United States or elsewhere of dumping of forklifts by Japanese manufacturers, producers, or exporters of forklifts. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A) of the Act when the estimated margins in our determination are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally, we consider estimated margins of 25 percent or greater to be sufficient (*See, e.g., Final Antidumping Duty Determination of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Italy* (52 FR 24198, June 29, 1987)). However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient. Since Nissan, Komatsu, Toyota, and TCM sell in the United States through related companies, we find that the requirements of section 733(e)(1)(A) are met for these companies. Since the estimated margin for Kasagi exceeds 25 percent, we find that the requirements of section 733(e)(1)(A) are met for this company as well. Therefore, we preliminarily determine that critical circumstances exist with respect to imports of forklifts by all manufacturers, producers, or exporters of forklifts from Japan except Sumitomo and Sanki.

Verification

We will verify the information used in making our final determination in accordance with section 776(a) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of forklifts from Japan from Sumitomo or Sanki that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. For entries from all other manufacturers, producers, and exporters, we are directing the U.S. Customs Service to suspend liquidation of all entries of forklifts from Japan that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of this notice in the Federal Register, in accordance with section 733(e)(2) of the Act. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of forklifts from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Toyota Motor Corp	20.46
Nissan Motor Co., Ltd	27.32
Komatsu Forklift Co., Ltd	24.43
Sumitomo-Yale	9.82
Toyo Umpanki Co., Ltd	42.73
Sanki Industrial Co., Ltd	15.98
Kasagi Forklift, Inc	56.81
All others	24.03

This suspension of liquidation covers imports of forklifts meeting the definition outlined in the "Scope of Investigation" section of this notice. If, at the time of entry into the United States, the importer can demonstrate to the satisfaction of the U.S. Customs Service that the forklift was manufactured at least three years prior to the date of entry, that vehicle will be considered to be used and will be exempt from the suspension of liquidation and any cash deposit or bonding requirements.

ITC Notification

In accordance with section 733(f) of

the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Acting Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this determination or 45 days after the final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on January 11, 1988, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Acting Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Acting Assistant Secretary by January 4, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

November 18, 1987.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 87-27024 Filed 11-23-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-405]

Certain Textile Mill Products From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 21, 1987, the Department published in the **Federal Register** (52 FR 31654) the preliminary results of its administrative review of the countervailing duty order on certain textile mill products from Mexico. The review covers the period January 3, 1985 through December 31, 1985 and 18 programs.

We gave interested parties an opportunity to comment on the preliminary results. After reviewing all of the comments received, the Department has determined the net subsidy to be zero or *de minimis* for 16 companies and 5.69 percent *ad valorem* for all other companies during the period of review.

EFFECTIVE DATE: November 24, 1987.

FOR FURTHER INFORMATION CONTACT: Jean M. Carroll or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 31654) the preliminary results of its administrative review of the countervailing duty order on certain textile mill products from Mexico. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican textile mill products. For a complete description of these products see Appendix A of this notice. In Appendix A of our notice of preliminary results, a TSUSA item, 310.1170, was incorrectly listed. The correct number is 310.1570. The review covers the period January 3, 1985 through December 31, 1985 and 18 programs.

In this review, we followed our normal procedure of requesting information from all companies exporting the subject merchandise to the United States during the review period. In administrative reviews, we do not attempt to establish rates based on a sample of companies. We request data from all producers and exporters. We calculate the country-wide rate using information from the questionnaire responses and from our verification. Each firm is afforded an opportunity to inform us if it is receiving zero or *de minimis* benefits. If such firms do not come forward and request a zero rate, and the Mexican Government does not identify those firms receiving zero or *de minimis* benefits, we must conclude, as the best information available, that all of the firms not identified as receiving zero or *de minimis* benefits receive "positive," *i.e.*, higher than *de minimis*, beneifts.

Because it is in the interest of firms that receive zero or *de minimis* benefits to inform us of their level of benefits, it is reasonable to assume that firms that do not respond to our questionnaire have received positive benefits. In fact, one could argue that the higher the benefit received, the less incentive there is to respond to our questionnaire.

We do not include firms with zero or *de minimis* benefits in the denominator when we calculate the country-wide rate because to include benefits from zero-rate firms in the country-wide weighted-average rate would understate the benefit received by the firms known to have received subsidies. Thus, we consider the firms which we have identified as receiving positive benefits to be representative of all firms that have not received zero or *de minimis* benefits.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from two respondents: Hilasal Mexicana, S.A. de C.V, and Tapetes Luxor, S.A. de C.V.

Comment 1: Hilasal argues that it did not obtain benefits under the Article 15 and Article 94 loan programs. The "Cajon 3" (Box) loans found at verification were private commercial loans, not Article 15 loans, as the Department mistakenly assumed. In the verification report, the Department noted that the loan contracts did not have Article 15 or Article 94 designations on them.

Department's Position: Hilasal listed the "Cajon 3" loans as Article 94 or Article 15 loans in its loan ledgers. It subsequently claimed that the loans were private and that it had inadvertently categorized them under Article 15. At verification, we asked Mexican bank officials for an

explanation of the "Cajon 3" loans. The bank officials described these loans as having the same terms and interest rates as those given under the Article 15 program. Hilasal provided no further information on the loans. Therefore, as the best information available, we have treated these "Cajon 3" loans as Article 15 loans.

Comment 2: Hilasal argues that Article 15 loans are not countervailable because they are available to a wide variety of industries and are not limited to exporters.

Department's Position: On January 15, 1985, the Mexican Government enacted the "Ruling Law for Public Service and Banking and Credit" ("the Ruling Law"). The Ruling Law replaces all previous banking laws, including the General law of Credit Institutions and Auxiliary Organizations ("the Banking Law"). Article 15 of the Ruling Law supersedes Article 94 of the Banking Law. We previously found Article 94 to be countervailable in *Litharge, Red Lead, and Lead Stabilizers from Mexico; Final Results of Administrative Review of Countervailing Duty Order,* (49 FR 30002, July 25, 1984). We found Article 15 loans to be countervailable in *Porcelain-on-Steel Cooking Ware form Mexico; Final Affirmative Countervailing Duty Determination, (51 FR 36447, October 10, 1986).*

Both the Ruling Law and the Banking Law require that a certain percentage of a bank's funds be deposited with the Banco de Mexico, and both laws target selected scetors for priority investment by banks. The number of sectors and amount of funds targeted to each sector differ, but both laws include a category for the financing of exports of manufactured products. Such financing is countervailable because it is given at below-market interest rates for merchandise destined for export.

Comment 3: Hilasal argues that the Department improperly found FOMEX loans countervailable. Under the terms of the 1985 Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties ("the Understanding"), the Government of Mexico agreed to eliminate the subsidy element of export financing programs, such as FOMEX, by December 31, 1986. The Government of Mexico has kept its commitment to bring FOMEX interest rates into compliance with international lending guidelines. The Understanding defines the benchmark interest rate as the yield on the most recent auction of 90-day Treasury bills of the Government of the United Mexican States (CETES). The Department cannot use Banco de Mexico average lending rates as its benchmark when the Understanding clearly specifies a different benchmark rate.

Department's Position: The Understanding signed on April 23, 1985, is a bilateral agreement between the Governments of the United States and Mexico by which the United States agreed to grant Mexico injury tests on all investigations in progress and by which Mexico agreed to eliminate the subsidy element of certrain programs. As a result of the Understanding, the United States designated Mexico as a "country under the Agreement," as defined in section 701 of the Tariff Act of 1930 (50 FR 16335, April 30, 1985).

The U.S. countervailing duty law distinguishes between "countries under the Agreement" and countries not under the Agreement only in the provision of an injury determination. In all other respects, countries under the Agreement and countries not under the Agreement are treated the same. Seciton 771(5) of the Tariff Act of 1930, as amended in the Trade Agreements Act of 1979 (TAA), provides that "The term 'subsidy' has the same meaning as the term 'bounty or grant' as that term is used in section 303 of this Act, * * *" The Senate Finance Committee Report on the TAA states that "The definition of 'subsidy' is intended to clarify that the term has the same meaning which administrative practice and the courts have ascribed to the term 'bounty or grant' under section 303 of the Tariff Act of 1930, unless that practice or interpretation is inconsistent with the bill." S. Rep. 249, 96th Cong., 1st Sess. 84 (1979). The Department of Treasury previously used an average commercial benchmark to measure the benefit form short-term export financing programs. Since there is nothing in the TAA that deals expressly with short-term export financing, there is no bar against the continued use of the Treasury standard.

We have consistently used the same benchmark for short-term export loans as for short-term domestic loans, *i.e.*, the national average commercial interest rate for comparable financing. *See, e.g., Final Affirmative Countervailing Duty Determination; Certain Textile Mill Products form Thailand,* (52 FR 7626, March 12, 1985); and *Final Affirmative Countervailing Duty Determinationm and Countervailing Duty Order; Ceramic Tile form Mexico.* (47 FR 20014; May 10, 1982). For a general discussion of export financing programs, see "Identifying and Measuring Subsidies Under the Countervailing Duty Law: An Attempt at Synthesis," *The Commerce Department Speaks on Import Administration and Export Administration* (1984) pages 48–61. Although this article does not represent official Department policy, the discussion on export financing programs is useful for understanding our methodology. For a general discussion of our preference for measuring the benefit to recipients as opposed to the cost to governments, see *Certain Steel Products form Belgium; Final Affirmative Countervailing Duty Determination,* Appendix 4 (47 FR 39328, September 7, 1982).

Thus, the Understanding and the U.S. countervailing duty law serve two separate purposes. The Treasury bill rate specified in the Understanding measures the Mexican government's compliance with the terms of the agreement. It does not measure the level of subsidizaion under U.S. countervailing duty law. Section 6 of the Understanding makes this clear: "No provision of this Understanding shall be construed to prevent the United States form finally imposing countervailing duties *pursuant to its national law* on products or Mexico receiving subsidies of any kind, * * *" (emphasis added).

For these reasons, we consider the appropriate benchmark for measuring the benefit from FOMEX to be the average effective lending rate reported by the Banco de Mexico. Because this benchmark was higher than the average FOMEX rates, we determine that FOMEX loans were countervailable during the review period.

Comment 4: Tapetes argues that the Department should grant it a zero deposit rate because the company was sold in an arm's-length transaction on June 8, 1987. The arm's-length transaction signifies that Tapetes is no longer benefiting from countervailable subsidies. The reasoning that underlies this principle is obvious: when a company is sold in an arm's-length transaction, the seller seeks to recover the maximum price for the company, including the benefit of any government assistance. In *Certain Softwood Lumber Products from Canada; Final Countervailing Duty Determination,* (49 FR 24159, May 31, 1983), the Department agreed in principle that grant payments to companies that were subsequently sold in arm's-length transactions should not be countervailed.

Although Tapetes did not export in the review period, the new owners have provided sworn statements that the company has received no FOMEX loans and will receive none in the future. Tapetes further contends that the Department's policy of requiring that a company export the subject merchandise during the review period in order to participate in an administrative

review of that period is inappropriate in this case.

Department's Position: The cash deposit rate reflects our best estimate of the current benefit that companies derive from countervailable programs. We normally change the cash deposit rate if a program-wide change has occurred before publishing our preliminary notice, or if some other change occurs that we are able to verify before publishing the preliminary notice. During this administrative review, for example, we adjusted the cash deposit rate for a program-wide change in the FOMEX program: A change in the interest rates charged for pre-export and export financing.

Generally, to be considered for a zero rate for deposit or assessment purposes, a company must have exported during the review period. If a company has not exported during the review period, we have no "track record" to rely on in determining whether the level of benefits has changed. In this case, we have verified neither Tapetes's renunciation of FOMEX subsidies nor its sale in an alleged arm's-length transaction. Without such a record, we have no basis for assuming that the new company did not or will not receive benefits from FOMEX or from any other Mexican subsidy programs. If Tapetes were a new company or a company just beginning to export to the United States, we would not give it a zero deposit rate unless it were able to demonstrate that it did not use countervailable subsidies. Not having exported, Tapetes cannot make such a demonstration.

In addition, the sale of a company in and of itself does not indicate a change in the level of short-term benefits such as FOMEX. While we agree in principle that the sale of a firm may affect benefits from long-term programs, such as grants or equity infusions, short-term programs are just as likely to be used by the new owner as by the former owner. The transfer of ownership of a firm involves the sale of fixed assets, not short-term loans. Furthermore, although Tapetes has made an effort to demonstrate its renunciation of short-term benefits, the short-term financing we found for the company under its previous owners were importer loans, which Tapetes itself claimed no knowledge of or control over. Since the original owners of Tapetes had no control over the receipt of FOMEX loans by their U.S. importers, we have no reason to conclude that the new owners have any control over their U.S. importers either.

Comment 5: Because of the lag of up to three years between the posting of cash deposits of estimated duties and the completion of an administrative review, Tapetes contends that the new owners are unfairly burdened with paying cash deposits that are based on benefits received by the former owners. This long lag is inconsistent with the GATT Subsidies Code on two accounts: countervailing duties may be imposed only to the extent necessary to offset the subsidies received; and provisional measures, such as countervailing duty deposits, should only be used to prevent injury and, in any case, should not exceed four months. The Department's practice is also inconsistent with Congressional efforts to remove nontariff barriers in accordance with the Tokyo Round of GATT negotiations.

Department's Position: Article 4, paragraph 2 of the GATT Subsidies Code provides that: "No countervailing duty shall be *levied* on any imported product in excess of the amount of the subsidy found to exist * * *" (emphasis added). Footnote 14 of the text clearly defines the term "levy": "As used in this Agreement, 'levy' shall mean the definitive or final legal assessment or collection of a duty or tax."

Since we have not yet levied final duties on Tapetes Luxor for 1987 (the year ownership changed), we have not violated the Subsidies Code. Before levying final duties, we will investigate thoroughly the change in ownership and assess the level of benefits received by the company in an administrative review.

Article 5, paragraph 1 of the Subsidies Code states:

> Provisional measures may be taken only after a preliminary affirmative finding has been made that a subsidy exists and that there is sufficient evidence of injury . . . Provisional measures shall not be applied unless the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation.

Article 5, paragraph 2, states: "the imposition of provisional meausres shall be limited to * * * four months."

The provisional measure of the Subsidies Code refer only to the period of investigation. We observe the 120-day limit prescribed in Article 5 throughout the investigations stage of a countervailing duty proceeding. The Subsidies Code, however, does not impose limits once a final finding of injury (or an affirmative countervailing duty order) is made. Rather, Article 4, paragraph 9 of the Subsidies Code merely provides for the periodic review of an order:

> A countervailing duty shall remain in force only as long as, and to the extent necessary to countreact the subsidization which is causing injury. The investigating authorities shall review the need for continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.

Therefore, our policy is consistent with the GATT. For a further discussion of the relationship between the provisional measures of the GATT and Department policy, see *Certain Footwear form India; Final Results of Administrative Review of Countervailing Duty Order,* (47 FR 6907, February 17, 1982).

Finally, we are statutorily mandated to collect an estimated cash deposit once a countervailing duty order has been issued. See section 706(a)(3) of the Tariff Act. Contrary to the suggestions of Tapetes, the Department has made great efforts to reduce the lag between the posting of cash deposits and the completion of administrative reviews. For example, by January 1987, we had completed more than two-thirds of the 130 backlog reviews.

Firms Not Receiving Benefits

We preliminarily found the following nine firms received zero or *de minimis* benefits during the review period:

(1) Bemis Craftil, S.A. de C.V.
(2) Celanese Mexicana, S.A.
(3) Crisol Textil, S.A. de C.V.
(4) Hilados y Tejidos de Tepeji del Rio, S.A.
(5) Hilados y Tejidos de San Jorge
(6) Hilaturas Maya, S.A.
(7) Ryltex, S.A.
(8) Tamacani, S.A.
(9) Tauro Textil, S.A. de C.V.

An additional eight firms reported that they received no benefits after the questionnaire responses were due. However, we were able to verify that the following seven companies received zero or *de minimis* benefits during the review period:

(1) Ultrafil
(2) Milyon, S.A.
(3) Fibrasomi, S.A.
(4) Fisher-Price, S.A. de C.V.
(5) Torenco, S.A.
(6) Corporation Charles
(7) Caltex, S.A.

Final Results of Review

After reviewing all of the comments received, we determine the net subsidy to be zero or *de minimis* for the above 16 firms and 5.69 percent *ad valorem* for all other firms during the review period.

The Department will therefore instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 16 firms listed above and to assess countervailing duties of 5.69 percent of the f.o.b. invoice price on shipments of

this merchadise from all other firms exported on or after January 3, 1985 and on or before December 31, 1985.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on any shipments of merchandise from the 16 firms listed above and, due to the change of FOMEX interest rates, to collect a cash deposit of estimated countervailing duties of 3.51 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

This adminstrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Gilbert B. Kaplan,

Acting Assistant Secretary for Administration.

November 19, 1987.

CERTAIN TEXTILE MILL PRODUCTS FROM MEXICO

FINAL RESULTS OF ADMINISTRATIVE REVIEW

[Appendix A.—TSUSA Codes for 1985]

Yarns

300.6020	300.6024	300.6028	301.0000	301.1000
301.2000	301.3000	302.0024	302.1024	302.1028
302.2020	302.2024	302.2026	302.2028	302.3024
302.3026	302.3028	302.4026	303.2040	303.2042
307.6810	310.0106	310.0109	310.0110	310.0114
310.0130	310.0149	310.0150	310.0206	310.0209
310.0230	310.0249	310.0250	310.0270	310.0510
310.1015	310.1070	310.1109	310.1150	310.1570
310.2150	310.4027	310.4047	310.4050	310.5046
310.5047	310.5049	310.6034	310.9000	310.9120
310.9140				

Cordage

316.5500	316.5800	316.7000	319.0300	319.0700

Fabric

320.0003	320.0021	320.0022	320.0031	320.0034
320.0038	320.0042	320.0045	320.0049	320.0054
320.0057	320.0063	320.0066	320.0071	320.0072
320.0077	320.0080	320.0098	320.1034	320.1045
320.1063	320.1071	320.1077	321.0034	321.1071
321.1077	322.0062	322.0063	322.1006	322.1015
322.1025	322.1029	322.1030	322.1034	322.1036
322.1037	322.1040	322.1041	322.1045	322.1047
322.1048	322.1050	322.1051	322.1052	322.1053
322.1055	322.1056	322.1065	322.1066	322.1068
322.1071	322.1075	322.1077	322.1079	322.1081
322.1084	322.1085	322.1086	322.1088	322.1089
322.1090	322.1091	322.1095	322.1097	322.2016
322.2023	322.2069	322.2073	322.4003	322.4021
322.4022	322.4038	322.4042	322.4049	322.4054
322.4057	322.4066	322.4072	322.4080	322.4098
322.5012	322.5013	322.5014	322.5015	322.5016
322.5017	322.5018	322.5019	322.5023	322.5069
322.5073	322.8016	322.8023	322.8069	322.8073
322.9003	322.9021	322.9022	322.9038	322.9042
322.9049	322.9054	322.9057	322.9066	322.9072
322.9080	322.9098	324.2022	324.2024	324.2031
324.2038	324.2042	324.2049	324.2054	324.2057
324.2066	324.2072	324.2080	324.2098	324.8066
324.8072	324.8074	324.8080	324.8098	325.1051
325.1052	325.1085	325.1089	325.1091	325.1095
325.8022	325.8024	325.8031	327.2021	327.2022
327.2031	327.2038	327.2042	327.2049	327.2054

CERTAIN TEXTILE MILL PRODUCTS FROM MEXICO—Continued

[Appendix A.—TSUSA Codes for 1985]

327.2057	327.3003	327.3021	327.3022	327.3038
327.3042	327.3049	327.3054	327.3057	327.3066
328.2003	328.2021	328.2022	328.2031	328.2038
328.2042	328.2049	328.2054	328.2057	328.2066
328.2072	328.2080	328.2098	331.2022	331.2024
331.2031	331.2038	331.2042	331.2049	331.2054
331.2057	331.2066	331.2072	331.2074	331.2080
331.2098	336.1540	336.6251	336.6253	336.6257
338.4004	338.5007	338.5009	338.5010	338.5013
338.5021	338.5024	338.5030	338.5031	338.5036
338.5041	338.5045	338.5046	338.5049	338.5064
338.5065	338.5069	339.1000		

Special Construction Fabric

345.5053	345.5055	345.5057	345.5073	345.5075
345.5077	346.6050	346.6065	346.7000	347.6040
347.6800	348.0065	351.3000	351.5010	351.5060
351.6010	351.7060	351.8060	351.9060	352.2060
352.8010	352.8060	353.1000	353.5012	353.5052
355.1610	355.1620	355.1630	355.2500	355.4530
355.8100	356.2510	357.4500	357.7010	357.8060
358.0290	358.0690	358.1400	358.3500	358.5040
359.1010	359.1030			

[FR Doc. 87-27117 Filed 11-23-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a meeting of its Surf Clam and Ocean Quahog Committee, December 4, 1987, at the J. Allen Frear Federal Building Conference Room, 300 South New Street, Dover, DE, with a closed session (not open to the public), from 10 a.m. to 1 p.m., to review confidential data in relation to the surf clam and ocean quahog fisheries in preparation for amending the Surf Clam and Ocean Quahog Fishery Management Plan. The open session for participation by the public will be convened subsequent to the close session.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, 300 South New Steret, Room 2115, Dover, DE 19901; telephone: (302) 674-2331.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-27009 Filed 11-23-87; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

On December 9, 1987, at 10 a.m., the Pacific Fishery Management Council's Limited Entry Committee will convene a public meeting in conjunction with the Council's Technical Advisory Group, to continue work on developing specific limited access options, for discussion by the Council and the public. The public meeting will convene at the Pacific Council's office, address below, Room 330.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-27010 Filed 11-23-87; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Comite River Diversion, Louisiana, Project

AGENCY: U.S. Army Corps of Engineers, DOD, New Orleans District.

ACTION: Notice of intent to prepare a draft EIS.

SUMMARY:

1. *Proposed Action.* The proposed actions to be described in this statement are the alternatives for providing flood damage reduction and other water related resource needs to those areas within the Comite River Basin and, to a lesser extent, areas along the Amite River at and below Denham Springs, Louisiana.

2. *Alternatives.* The following alternatives are being considered:

a. *Alternative Plan 1 (Comite River Diversion with Outfall to Lily and Cooper Bayous).* The Comite River Diversion Plan consists of all 11-mile diversion channel from the Comite River to the Mississippi River, a Comite River stage control structure and levee, and a Comite River channel state control structure. The plan would lower stages along the Comite River and, to a lesser extent, along the Amite River. Four durations (levels) of protection are being considered along the Comite River: 10, 25, 50, and 100 years. Excavated

material from the diversion channel would be placed along the channel. The diversion channel would be about 35 feet deep and 300–400 feet wide. About 7 miles of channel from State Highway 67 to U.S. Highway 61 is being considered for a linear recreation lake and park.

b. *Alternative Plan 2 (Comite River and Amite River Channel Enlargement).* This plan consists of channel modifications of the Comite and Amite Rivers to reduce flooding along the Comite River and, to a lesser extent, along the Amite River. The extent of channel modifications is dependent on the four levels of protection along the Comite River being considered. Channel modifications are shown below.

Level of protection (Years)	Miles of channel enlargements		Miles of clearing and snagging	
	Comite River	Amite River	Comite River	Amite River
10	16			27.5
25	16			27.5
50	16	22		5.5
100	16	27.5		

c. *Alternative Plan 3 (Reservoir on Comite River).* A reservoir was considered for the Comite River that would provide the same levels of protection as Plans 1 and 2. Plan 3 has been eliminated from further consideration because suitable sites for the reservoir would require extensive relocation of people. Due to the topography of the area, the dam embankment would be of considerable length. A smaller reservoir will be considered in the vicinity of Clinton, Louisiana. This reservoir will be considered in combination with features of Plans 1 and 2. These plans are discussed in subsequent paragraphs.

d. *Alternative Plan 4 (Olive Branch Reservoir and Comite River Diverion).* This plan consists of features of Plan 1 with the Olive Branch Reservoir. Two sizes of reservoirs are being studied. Both reservoirs are dry or single-purpose, with flood control pools ranging from about 3,200 to 5,700 acres.

e. *Alternative Plan 5 (Olive Branch Reservoir And Comite River Enlargement).* Plan 5 includes features of Plan 2 and the Olive Branch Reservoir.

f. *Alternative Plan 6 (Comite River Diversion and Comite and Amite Rivers Enlargement).* The plan consists of features of Plan 1 and Plan 2.

g. *Alternative Plan 7 (Olive Branch Reservoir, Comite River Diversion, and Comite and Amite Rivers Enlargements).* Plan 7 consists of features of Plans 1 and 2 and the Olive Branch Reservoir.

h. *Non-Structural Alternatives.* Non-Structural alternatives, including flood proofing of homes, flood plain management, relocation of structures, etc., will be studied.

i. *No Action.* The alternative of no action, or future-condition without Federal action, will be the basis for comparing any action alternative considered

3. *Scoping Process.* a. A public meeting was held in Baton Rouge on October 30, 1984, to discuss results of an Initial Evaluation Report that had been performed for the entire Amite River Basin. This current study is one of several that were determined to warrant further investigation following the 1984 meeting. During the course of the Comite River Diversion Study, numerous meetings have been held between representatives of Federal and state agencies, groups and individuals. All affected Federal, state, and local agencies and other interested private organizations and parties are encouraged to participate throughout the EIS process

b. The EIS will evaluate impacts of the alternatives on resources identified as significantly by institutional, public, or technical recognition. At this stage, project economics and impacts to a scenic stream are considered areas of special interest.

c. The U.S. Fish and Wildlife Service will provide a Draft Fish and Wildlife Coordination Act Report for attachment to the statement.

d. A minimum of a 45-day review period for the Draft statement will be allowed for all interested agencies and individuals.

4. *Scoping Meeting.* A scoping meeting is scheduled to take place at 7:00 p.m. at the Baker Municipal Center in Baker, Louisiana on November 17, 1987.

5. *Availability.* The Draft EIS is scheduled to be available to the public during the summer of 1988.

ADDRESS: Questions concerning the proposed action and draft EIS can be directed to Mr. Dave Reece, U.S. Corps of Engineers, Enviromental Analysis Branch (CE-LMNPD-RE), P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 862–2522.

Dated: November 16, 1987.

Lloyd K. Brown,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–26990 Filed 11–23–87; 8:45 am]

BILLING CODE 3710–84–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87-62-NG]

JDS Energy Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 29, 1987, of an application from JDS Energy Corporation (JDS) for blanket authorization to import up to 20 Bcf of Canadian natural gas over a two-year period, beginning on the date of the first delivery, for short-term and spot market sales to customers in the United States. JDS, a marketer of natural gas, is an Ohio corporation with its principal place of business in Brecksville, Ohio. JDS proposes to purchase the gas from a variety of suppliers and to use existing pipeline facilities to transport the volumes imported. The specific terms of each import and sale would be negotiated on an individual basis, including the price and volumes, based on competition in the market. JDS has requested that the authorization be granted on an expedited basis.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than December 24, 1987.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW. Washington, DC, 20585, (202) 586-9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR

6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., December 24, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comment, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, and show that it is material and relevant to a decision in the proceeding. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316. A copy of JDS' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 16, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-26905 Filed 11-23-87; 8:45 a.m.]

BILLING CODE 6450-01-D

[ERA Docket No. 87-42-LNG]

Phillips 66 Natural Gas Co.; Marathon Oil Co.; Order Amending Authorization To Export Liquefied Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order amending authorization to export liquefied natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order approving a joint request by Phillips 66 Natural Gas Company and Marathon Oil Company to amend their existing liquefied natural gas (LNG) export authorization. The amendment will enable the two exporters to charge more market responsive prices for the LNG sold to their two Japanese customers.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 16, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-26906 Filed 11-23-87; 8:45 a.m.]

BILLING CODE 6450-01-D

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before December 24, 1987. Last notice published Monday, October 5, 1987.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

For further information and copies of relevant materials contact: Carole Patton, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2222

SUPPLEMENTARY INFORMATION: 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 OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The energy information collection submitted to OMB for review were:

1. Federal Energy Regulatory Commission
2. FERC–423
3. 1902–0024
4. Cost And Quality of Fuels For Electric Plants
5. Extension
6. Monthly
7. Mandatory
8. Businesses or other for profit, State or local government, Federal agencies or employees, Non-profit institutions
9. 750 respondents
10. 9,000 responses
11. 18,000 hours
12. FERC–423, Cost And Quality Of Fuels For Electric Plants is used to gather information on the cost and quality of fuels delivered to electric power plants. The responses are used in evaluation of individual utility costs and practices in rate cases, and in the required periodic reviews to insure efficient use of resources.

1. Federal Energy Regulatory Commission
2. FERC–538
3. 1902–0061
4. Gas Pipeline Certificate: Initial Service
5. Extension
6. On occasion
7. Required to obtain or retain a benefit
8. Businesses or other for profit
9. 5 respondents
10. 5 responses
11. 1,600 hours
12. Pursuant to section 7(a) of the NGA, the Commission requires these data to determine if an interstate pipeline's existing facilities and service should be extended to meet initial service requirements of a local distribution company.

1. Civilian Radioactive Waste Management
2. RW–859
3. 1901–0287
4. Nuclear Fuel Data Form
5. Revision
6. On occasion
7. Mandatory
8. Businesses or other for profit
9. 127 respondents
10. 127 responses
11. 3,810 hours
12. RW–859 collects data to be used by the Office of Civilian Radioactive Waste Management to define, develop, and operate its programs which require information on spent nuclear fuel inventories, generation rates, and storage capacities. Respondents are all owners of nuclear power plants and owners of spent nuclear fuel.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974 (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, November 17, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87–26997 Filed 11–23–87; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3295–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Papework Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740 (FTS 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS Recordkeeping and Reporting Requirements for Asphalt Concrete Plants. (Subpart I). (EPA ICR #1127).

Abstract: Owners and operators of hot mix asphalt facilities must notify EPA of construction, reconstruction, modification, anticipated or actual start-up, and dates and results of performance tests. Records must also be maintained of any performance test results as well as the occurrence and duration of any start-up or malfunction. The States and/or EPA use the data to target inspections and, when necessary, as evidence in court.

Respondents: Owners and Operators of Hot Mix Asphalt Facilities.

Estimated Annual Burden: 3,801 hours.

Frequency of Collection: One time only.

Title: NSPS Recordkeeping and Reporting Requirements for Lead Acid Battery Manufacturing Plants. (Subpart KK) (EPA ICR #1072)

Abstract: Owners and operators of lead acid battery manufacturing plants that have a daily output capacity of 6½ tons of lead must notify EPA of construction, start-up, date of the initial performance, and the results of the initial performance test. Also required are records noting the occurrence and duration of any start-up, shut-down, or malfunction of an affected facility. Facilities using scrubbers must install, maintain, and operate a monitoring device that measures and records pressure drop across the scrubbing system. Records of pressure drop provide information pertaining to lead emissions. The States and/or EPA use the data to ensure compliance with the standard, to target inspections, and, when necessary, as evidence in court.

Respondents: Lead Acid Battery Manufacturers.

Estimated Annual Burden: 4,106 hours.

Frequency of Collection: One time only.

* * * * *

Comments on the abstract on this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Office of Standard and Regulations (PM–223), Information and Regulatory System Division, Information Policy Branch, 401 M St., SW. Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3019), 726 Jackson Place, NW., Washington, DC 20503.

Date: November 17, 1987.

David Schwarz,

Chief, Information Policy Branch.

[FR Doc. 87–27002 Filed 11–23–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3294-7]

Science Advisory Board, Environmental Engineering Committee, Unsaturated Zone Code Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Unsaturated Zone Code Subcommittee of the Science Advisory Board's Environmental Engineering Committee will hold a one-day meeting on Thursday, December 10, 1987 at the U.S. Environmental Protection Agency's Region 8 Headquarters in Denver, Colorado. The meeting, which will be held in the South Dakota Room, 999 18th Street, Denver, CO, will begin at 8:30 a.m. and end no later than 5:00 p.m.

The purpose of the meeting is to begin the review of the Office of Solid Waste's Unsaturated Zone Code FECTUZ. The Subcommittee will consider the following document in its review:

(1) The Octoboer 16, 1987 Memorandum "Science Advisory Board Review of the Unsaturated Zone Code for Office of Solid Waste Fate and Transport Model,"

(2) "Developing Joint Probability Distributions of Solid-Water Retention Characteristics" by Robert Carsel and Rudolph Parrish,

(3) "Methodology for Simulation Flow and Transport in the Unsaturated Zone,"

(4) "FECTUZ," September 1987 and,

(5) "Rational for the Development of FECTUZ."

Copies of these documents are identified by the number F-87-UZMN-FFFFF in the RCRA Docket. The RCRA Docket is located in Sub-basement room 212 at U.S. EPA (WH-562), 401 M Street Street, SW., Washington, DC 20460. The docket is open from 9:00 a.m. to 4:00 p.m. Monday through Friday except for federal holidays. Please call Michel Lee, (202) 475-9327 to use the docket.

The meeting is open to the publc. Any member of the public wishing to attend, make brief oral comments, or submit written comments to the Unsaturated Zone Code Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Marie Miller, Staff Secretary, of the Science Advisory Board at 202/382-2552 by December 7, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

Date: November 16, 1987

[FR Doc. 87-27004 Filed 11-23-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3294-8]

Science Advisory Board, Research Strategies Committee-Ecological Effects Subgroup; Cancellation of Open Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that the meeting of the Research Strategies Committee-Ecological Effects Subgroup of the Science Advisory Board that was scheduled to be held on December 15 and 16, 1987 at the General Academy Building, Conference Room #309 on the corner of Avenues B and Mulberry, North Texas State University, Denton, Texas, has been cancelled.

For further information please contact Ms. Janis C. Kurtz, Executive Secretary, Science Advisory Board on (202) 382-2552.

Terry F. Yosie,

Director, Science Advisory Board.

Date: November 17, 1987.

[FR Doc. 87-27003 Filed 11-23-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00249; FRL-3294-9]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Monday, December 14, and Tuesday, December 15, 1987, beginning at 8:30 a.m. on December 14 and ending prior to mid-afternoon on December 15, 1987.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703-486-1234).

FOR FURTHER INFORMATION CONTACT: By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7096).

SUPPLEMENTARY INFORMATION: The tentative agenda thus far includes the following topics:

1. A status report by the Director, Office of Pesticide Programs, on ongoing FIFRA-State issues.

2. Action items from the July 1987 meeting of the SFIREG.

3. Regional reports.

4. Working Committee reports.

5. Presentations by the Office of Pesticide Program's Registration Division on issues of interest to State Lead Agencies.

6. Presentations by the Office of Compliance Monitoring on issues of interest to State Lead Agencies.

7. Other topics as appropriate.

Dated: November 16, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-27005 Filed 11-23-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0108.

Title: Emergency Broadcast System (EBS) Activation Report.

Form Number: FCC 201.

Action: Extension.

Respondents: Businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 350 Responses; 30 Hours.

Needs and Uses: Broadcast stations are requested by FCC to voluntarily submit the EBS Activation Report. The data enables the Commission, the National Weather Service, and the Federal Emergency Management Agency to evaluate the efficiency and effectiveness of their program to develop an operational capability for national, state or local officials to use the EBS at the state and local level.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-26966 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 16, 1987.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, (202) 632-7513.

OMB No.: 3060-0390.

Title: Broadcast Station Annual Employment Report.

Form No.: FCC 395-B.

A revised application form FCC 395-B has been approved for use through 09/30/90. The current edition of FCC 395-B will remain in use until the revised forms are available. At that time, a Public Notice will be issued containing information on availability and implementation.

OMB No.: 3060-0113.

Title: Broadcast Equal Employment Opportunity Program Report.

Form No.: FCC 396.

A revised application form FCC 396 has been approved for use through 09/30/90. The current edition of FCC 396 will remain in use until the revised forms are available. At that time, a Public Notice will be issued containing information on availability and implementation.

OMB No.: 3060-0120.

Title: Broadcast Equal Employment Opportunity Model Program Report.

Form No.: FCC 396-A.

A revised application form FCC 396-A has been approved for use through 09/30/90. The current edition of FCC 396-A will remain in use until the revised forms are available. At that time, a Public Notice will be issued containing information on availability and implementation.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-26967 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. CF-7]

Window Notice For The Filing of FM Broadcast Applications

Released: November 6, 1987.

Notice is hereby given that applications for vacant FM Broadcast allotment listed below may be submitted for filing during the period beginning on the date of release of this public notice and ending December 15, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel	City	State
244A	San Saba	Texas

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-26975 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1691]

Petitions For Reconsideration of Actions in Rulemaking Proceedings

November 16, 1987.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed December 10, 1987. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Claremore, Oklahoma) (MM Docket No. 85-156, RM-4938)

Number of petitions received: 1

Subject: Revision of Part 21 of the Commission's Rules. (CC Docket No. 86-128)

Number of petitions received: 2

Subject: Review of Technical Parameters for FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations. (MM Docket No. 86-144)

Number of petitions received: 2

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Palmyra, Missouri and Pittsfield, Illinois) (MM Docket No. 86-146, RM-4958)

Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Pleasant Hope, Missouri) (MM Docket No. 86-30, RM-5236)

Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Mesquite, Nevada) (MM Docket No.87-94, RM-5584)

Number of petitions received: 1

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-26976 Filed 11-23-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Interim Procedures for Requesting Health Assessments

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), HHS.

ACTION: Notice of interim procedures.

SUMMARY: Section 104(i)(6)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes the Administrator of ATSDR to perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release, as defined under CERCLA. In addition, section 3019(c) of the Resource Conservation and Recovery Act (RCRA) permits any member of the public to submit evidence of releases of or exposure to hazardous constituents in a landfill or surface impoundment, which ATSDR can use as the basis for a health assessment. This notice describes the interim procedure for individuals to follow to request that ATSDR perform such health assessments. Comments are requested on these interim procedures to assist ATSDR in promulgating at a later date regulations dealing with the initiation and conduct of health assessments and other health effects studies.

DATE: Written comments should be submitted by February 22, 1987.

ADDRESS: Written comments in response to this notice should bear the docket control number ATSDR-3, and should be submitted to: Director, Office of External Affairs, Agency for Toxic Substances and Disease Registry.

Chamblee 28 South, 1600 Clifton Road NE., Atlanta, Georgia 30333.

All written comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 28 South, Room 1103, 4770 Buford Highway NE., Chamblee, Georgia, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Georgi Jones, Director, Office of External Affairs, Agency for Toxic Substances and Disease Registry, Chamblee 28 South, 1600 Clifton Road NE., Atlanta, Georgia 30333, Telephone: (404) 454–4620.

SUPPLEMENTARY INFORMATION: On October 17, 1986, the President signed the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499), which extends and amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 *et seq.*). Section 110 of SARA amends section 104(i) of CERCLA (42 U.S.C. 9604(i)) to authorize the Administrator of ATSDR to perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release, as defined in the Act. In addition, section 3019(c) of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6939a(c)) authorizes any member of the public to submit evidence of releases of or exposure to hazardous constituents in a landfill or surface impoundment, which ATSDR can use as the basis for a health assessment.

The purpose of this notice is to set forth interim procedures for individuals to follow to request ATSDR to perform health assessments. ATSDR will operate pursuant to these procedures pending promulgation of regulations dealing with the initiation and conduct of health assessments and other ATSDR studies authorized under CERCLA, SARA, and RCRA.

A health assessment is the evaluation of data and information on the release of hazardous substances into the environment in order to: assess any current or future impact on public health, develop health advisories or other public health recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects. ATSDR, when conducting a health assessment, will consider such factors as the nature and extent of contamination at a particular site, the existence of potential pathways of human exposure, the proximity of human populations to the site or release, and the potential for adverse health outcomes resulting from exposure to the substances of concern.

ATSDR will accept and review requests to perform health assessments from such entities as an individual person or persons, organizations, corporations, businesses, and State and local governmental units. All requests to ATSDR to perform health assessments should be sent in writing to: Associate Administrator, Agency for Toxic Substances and Disease Registry, Chamblee, Building 27, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Requests to ATSDR to conduct a health assessment should contain, at a minimum: (1) The name, address (including Zip Code), and telephone number of the requester; (2) the organization or group the requester represents, if any; (3) the name and location of the facility or release of concern; (4) a statement by the requester of his or her perception of the potential health problems associated with the facility or release; and (5) a statement requesting ATSDR to perform a health assessment. In addition, the requester should include, if available: (1) Any other information pertaining to the facility or release, such as the nature and amount of the hazardous substances of concern, indicating, if known, the media contaminated (e.g., soil, ground water, air, surface water, food chain); (2) potential pathways for human exposure; (3) the nature and proximity of the potentially affected human community; and (4) Federal, State, or local agencies which have been notified or which have investigated the facility or release. This data collection has been reviewed and approved by OMB in accordance with the Paperwork Reduction Act and assigned the control number 0920–0204.

ATSDR may contact other Federal, State, and local agencies to obtain any information that will assist ATSDR in characterizing the facility or release.

In determining whether to conduct a health assessment in response to a public request, ATSDR will consider, among other factors: (1) The location, concentration, and toxicity of the hazardous substances; (2) the potential for human exposure; (3) the recommendations and findings of other governmental agencies; and (4) other ATSDR priorities, such as its statutory mandate to conduct health assessments at all sites on, or proposed for inclusion on, the National Priority List.

The requester of a health assessment will be notified in writing by the Associate Administrator of ATSDR's determination that either (1) a health assessment will be performed; (2) a health assessment will not be performed; or (3) further information concerning the facility or release is required before a decision can be made whether a health assessment will be performed. If a health assessment is performed, ATSDR will provide copies of the health assessment report to at least the requester, the U.S. Environmental Protection Agency, and appropriate State and local governmental agencies. In addition, copies of the health assessment report will be available to the public upon request. If a health assessment is not initiated in response to a request from the public, ATSDR shall provide the requester a written explanation of why a health assessment is not appropriate.

Dated: November 17, 1987.

James O. Mason,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 87–26981 Filed 11–23–87; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Collection of Fees for Sanitation Inspections of Passenger Cruise Ships

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of collections of fees for sanitation inspections of passenger cruise ships.

SUMMARY: Collection of fees for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program, CDC will commence on January 1, 1988.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia, 30333. Telephone: FTS: 236–4111, Commercial: (404) 452–4111.

SUPPLEMENTARY INFORMATION:

Purpose and Background

A notice of request for public comment on a proposal for collection of fees for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program, CDC was published in the **Federal Register** on Friday, July 17, 1987 (52 FR 27060). A subsequent amendment to extend the comment period an additional 30 days was published in the **Federal Register** on Wednesday, August 12, 1987 (52 FR 29889).

The **Federal Register** notice of July 17, 1987 (52 FR 27060) cited the appropriate authority for the vessel sanitation inspections (Public Health Service Act Sections 361–369, 42 U.S.C. 264–272) and the authority to collect fees for the full costs of services (Pub. L. 99–591, Sec. 101(i)).

Discussion of Comments

The public notice of the intent to collect fees provided a 30 day comment period which was extended an additional 30 days at the request of members of the cruise ship industry. During the comment period, comments were received from 46 sources, one of which was the International Committee of Passenger Lines (ICPL) representing 19 separate cruise lines and their subsidiaries. Of the 46 comments received, 38 supported CDC's position and therefore are not addressed in this notice. Discussion of the other substantive comments and CDC's responses follows:

Comment: Several commentors questioned the statutory authority of CDC to conduct sanitation inspections and suggested that the Vessel Sanitation Program was not structured to prevent the importation of communicable diseases into the United States. Other commentors questioned the authority of CDC to collect fees for the vessel sanitation inspections. One commentor suggested that the collection of fees was a violation of the International Health Regulations of the World Health Organization.

Response: After consultation with the Office of General Counsel, it is CDC's conclusion that the collection of fees for sanitation inspections of passenger cruise ships is covered by existing authorizations, that 42 U.S.C. 264–272 provide the statutory authority for CDC to conduct sanitation inspections, and that the collection of fees for sanitation inspections of passenger cruise ships does not violate the intent of the International Health Regulations.

Comment: One commentor suggested that the fee set for a small vessel was too low and proposed an alternate method of payment of a general tax based on tonnage or ship size. Another commentor suggested that the complexity and length of inspection is a function of the number of galleys, pantries, and other facilities that serve the passengers and crew. The same commentor suggested that the percentage of new ships in the large and extra large GRT categories will increase in the future and eventually require a revised fee schedule.

Response: The schedule of fees set forth in the public notice was based on the Gross Register Tonnage (GRT) of the passenger vessels as reported by Lloyds of London. CDC believes that the use of GRT is a reasonable and equitable method for determining fees since the number and size of the food service areas and the size of the onboard water systems are generally functions of the vessel's GRT. CDC, after considering the commentor's alternative proposal which also acknowledges that correlation, sees no advantage in the commentor's proposal over CDC's. CDC agrees that as the percentage of new vessels in the large and extra large category increases in the future, a revised fee schedule may be necessary. The fee schedule is based on CDC's estimate that the complexity and time required to conduct sanitation inspections depends upon a vessel's size. CDC will periodically review the fee schedule. If actual experience in fee collection indicates that CDC's proposed system does result in substantial inequity, CDC will act promptly to correct the situation.

Comment: Other commentors suggested that because the vessel sanitation inspections are a government function, the government should bear the full cost of the program.

Response: CDC believes that the collection of fees to recover the full cost of the Vessel Sanitation Program is prudent public policy and fulfills government responsibilities.

Comment: Two commentors suggested the collection of fees by a contractor created a perception of collusion.

Response: CDC will retain responsibility for the collection of fees; cruise lines will be billed directly by CDC. CDC is confident that programs it will put into place to monitor the collection of fees will be sufficiently stringent to preclude any actual collusion or conflict of interest and to negate any perception of collusion or conflict of interest.

Comment: One commentor expressed concern that CDC limit its recovery of costs to actual cost of operating the program and requested that CDC establish a detailed cost accounting system to ensure that costs recovered are only those actually attributable to the operation of the program. The commentor also requested that both the annual costs of the program and the amount of fees collected be publicly reported on a yearly basis.

Response: CDC's previously stated intention is to limit its recovery to only those costs actually attributable to the operation of the program. CDC intends to apply accepted cost accounting principles in determining costs as required by OMB Circular A–25, "User Charges." These determinations can be made available to the public.

Applicability

The fees will be applicable to all passenger cruise vessels for which sanitation inspections are conducted as part of the Vessel Sanitation Program, CDC.

Fees

The following fee schedule will apply through December 31, 1988.

Vessel size	Fee
<15,000 GRT	$1,075
15-30,000 GRT	2,150
>30-65,000 GRT	3,225
>65,000 GRT	4,300

Inspections and Reinspections involve the same procedure and require the same amount of time; therefore they will be charged at the same rate.

Prior to January 1, 1988, instructions as to the billing procedure and method of payment will be provided to owners/agents of all passenger cruise vessels calling at United States ports of entry.

Dated: November 18, 1987.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–26978 Filed 11–23–87; 8:45 am]

BILLING CODE 4160–18–M

Contract for Sanitation Inspection of Passenger Cruise Ships

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of intent to contract for sanitation inspections of passenger cruise ships.

SUMMARY: The Public Health Service intends to contract with a party, or parties, for routine sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program, CDC. The contractor(s) would conduct physical inspections only and would report results to CDC. CDC will retain primary responsibility for the program including scheduling inspections, determining the content of the inspections, oversight of inspections, and reporting inspection results to the public.

EFFECTIVE DATE: On or about March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia, 30333. Telephone: FTS: 236–4111, Commercial: (404) 452–4111.

SUPPLEMENTARY INFORMATION:

Purpose and Background

A notice of request for public comment on a proposal to contract sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program, CDC was published in the **Federal Register** on Thursday, August 20, 1987 (52 FR 31448).

The **Federal Register** notice cited the appropriate authority for the vessel sanitation inspections (Public Health Service Act Sections 361–369, 42 U.S.C. 264–272). Regulations for the inspection program appear at 42 CFR Part 71.

Discussion of Comments

The public notice provided a 30 day comment period during which comments were received from 87 sources; one of those sources was the International Committee of Passenger Cruise Lines (ICPL) representing 19 cruise lines and their subsidiaries. Discussion of the substantive comments and CDC's responses follows:

Comment: Several commentors raised the issue of the potential for a conflict of interest if the contract(s) is awarded to a firm which also provides goods or services to the cruise ship industry.

Response: CDC agrees that there exists the potential for a conflict of interest in contracting for the sanitation inspections if in addition to conducting inspections, the contractor(s) also provide(s) goods and services to the passenger cruise ships. Therefore, under the terms of any resulting inspection services contract, the contractor(s) will not be allowed to enter into separate financial arrangements with vessel owners, operators, and/or staff for providing consultations or training related to the improvement of sanitation activities on-board vessels inspected under the Vessel Sanitation Program. The contractor(s) will be required to provide CDC with an affidavit from an authorized officer of the contractor(s) stating that the only direct or indirect benefit received from the contractual arrangement with CDC will be the fee paid directly by CDC.

Comment: Several commentors also expressed the belief that the sanitation inspection of passenger cruise ships is a Government function and should not be assigned to private contractors.

Response: CDC agrees that the conduct of a program for the sanitation inspection of passenger cruise ships is a legitimate function of CDC. In contracting for only the routine physical inspection portion of that program, CDC is not diminishing its authority or responsibility. CDC will retain responsibility for scheduling the inspections and reinspections, establishing the content of the inspections, assuring the quality of the inspections, keeping the inspection guidelines current, and reporting the results of the inspections to the public.

Comment: One commentor questioned whether the technical expertise of potential inspectors could be assured if State or local governments or environmental agencies were contract recipients.

Response: Contracts will be awarded only to those organizations or agencies—governmental or non-governmental—which provide CDC with satisfactory evidence that they possess the experience and technical expertise necessary to meet the stringent requirements which will be set forth in CDC's solicitation request. CDC has stated its intention to reserve the right to cancel the contracting process if, in the opinion of CDC's Technical Review Panel, the proposals submitted do not meet CDC's technical requirements.

Comment: One commentor suggested that the requirement for work experience in the actual performance of sanitation inspections of large institutional food service operations was "incomplete and exclusionary."

Response: CDC agrees that work experience in large institutional food service operations by itself may not be sufficient for required experience levels. Work experience is only one of the variables considered in the inspector qualification requirements. Education level and quality of experience are considered in the determination of acceptable work experience. The Vessel Sanitation Program Operations Manual and CDC's solicitation request will set forth the minimum education and work experience requirements for inspector qualifications.

Comment: Several commentors recommended selection of a single contractor to conduct inspections at all ports of entry to assure uniform interpretation and application of the inspection guidelines and to assure consistency of inspections.

Response: CDC believes that its' oversight inspections and quality control and quality assurance techniques and the quality control and quality assurance which the contractor(s) must describe in their proposals will assure consistency of inspections between ports. If inconsistent application or interpretation of CDC's inspection guidelines occurs, CDC will take immediate action to resolve the problem. Further, CDC recognizes that some companies and/or agencies may employ highly qualified and technically competent individuals but not have the requisite staff to perform sanitation inspections at all the required U.S. ports of entry. CDC does not wish to exclude a company and/or agency from the competitive contracting process based solely on its size.

Comment: One commentor raised the issue of the contractor(s)' generating additional revenue for their organization(s) by doing frequent inspections.

Response: CDC will maintain responsibility for scheduling inspections and reinspections and thereby preclude generation of extra revenue by increasing the frequency of inspections.

Comment: One commentor expressed concern that the competitive procurement process would result in poor quality inspections if costs are the primary considerations.

Response: CDC agrees that due to the complex and technical nature of the sanitation inspections, cost considerations cannot be the sole consideration in evaluating proposals. Therefore, CDC will give approximately equal consideration to the evaluation of technical merits of proposals and cost.

Comment: Commentors from different sources suggested that the contractor(s) should be allowed to schedule inspections and have CDC monitor the schedule. One commentor suggested that the scheduling of inspections by CDC would lead to conflicts with the contractor(s) and would create cost control problems for the contractor(s).

Response: The solicitation for the sanitation inspection contract will include an estimate of the number of inspections to be performed at each port of entry. CDC believes that sufficient information will be provided in the contract solicitation to allow interested parties to prepare an accurate cost determination of doing inspections at the request of the program. CDC intends to retain sole responsibility for scheduling routine unannounced inspections and reinspections thereby assuring confidentiality of inspection schedules.

Comment: One commentor questioned the authority of contract inspectors to board passenger cruise vessels.

Response: There are two possible areas of concern the commentor may be addressing: (1) The commentor may have been asking for clarification on access to United States Customs Service security areas at ports of entry prior to the vessel receiving Customs clearance. The contractor(s) will be required to file an application with the District Director

of Customs to enable their employees to gain access to Customs security areas. The contractor(s) will be required to meet the standards required by the United States Customs Service as set forth in Part 6 of the Customs Duties Regulations; or, (2) the commentor may have been questioning the authority of a non-governmental contract employee to board the vessel. After consultation with the Office of General Counsel, CDC believes that an inspector under contract to the Vessel Sanitation Program has the same authority to conduct sanitation inspections as does an inspector who is an employee of CDC.

Comment: There were comments received which: (1) Urged consideration of changes in the scoring system; (2) encouraged changes in the appeals process to allow the captain of the vessel more time to notify CDC of the desire to appeal an inspection result; (3) encouraged CDC to conduct an informal survey of the cruise ship lines to determine the amount of monies spent annually on training of crews in environmental health and sanitation; and, (4) encouraged reporting the results of the inspections in a timely manner.

Response: CDC is considering proposing the establishment of a Vessel Sanitation Program Advisory Committee composed of representatives from the cruise ship industry, consumer advocates, and State and local health agencies. Consideration and resolution of these issues will not affect the decision on contracting and would be appropriate issues for an advisory committee. The divergent views relating to these issues would be presented to the advisory committee for its consideration and advice. Notices regarding the Vessel Sanitation Program Advisory Committee will be published in the **Federal Register.**

No substantial changes were recommended in the responsibilities of the contractor(s) and CDC from those appearing in the public notice.

A synopsis of the proposed contract and instructions for receiving a copy of the solicitation document will be published in the Commerce Business Daily on or about November 24, 1987.

Dated: November 18, 1987.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87-26977 Filed 11-23-87; 8:45 am]

BILLING CODE 4160-18-M

Office of Child Support Enforcement

Conformity of Child Support Enforcement Plan of the Commonwealth of Pennsylvania with Federal Requirements; Hearing

Notice of hearing is hereby given as set forth in a letter that has been sent to the Commonwealth of Pennsylvania's Department of Public Welfare.

The letter is in response to the letter of August 14 from Gilbert M. Branche, Deputy Secretary of the Pennsylvania Department of Public Welfare, requesting a hearing prior to my final decision to approve or disapprove Pennsylvania's State IV-D plan in accordance with the procedures set forth in OCSE-AT-86-21.

Pursuant to 45 CFR 213.12, I am scheduling a hearing to be held on the 13th day of January 1988 in Washington, DC, at 9:30 a.m. in Room 2155 of the Board of Contract Appeals, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

In accordance with 45 CFR 213.21, I have designated Norval D. Settle, Chair of the Departmental Grant Appeals Board, as the presiding officer for State plan disapproval hearings, and he has redesignated Donald F. Garrett as the presiding officer for Pennsylvania's hearing. Copies of the designations are enclosed. The hearing will be conducted under the provisions of 45 CFR Part 213.

The issues which will be considered at the hearing concern whether Pennsylvania's State IV-D plan is in conformance with State plan requirements, as specified in my notice of June 19, 1987. Specifically, the issues are whether:

1. The State has failed to submit an amendment to its State plan at section 2.12-2 providing for expedited procedures, in accordance with the requirement at 45 CFR 302.70(a)(2).

2. The State has failed to submit an amendment to its State plan at section 2.12-3 providing for the collection of overdue support from State income tax refunds, in accordance with the requirement at 45 CFR 302.70(a)(3).

3. The State has failed to submit an amendment to its State plan at section 2.12-9 providing for the prohibition of retroactive modification of child support arrears, in accordance with the requirements at 42 U.S.C. 666(a)(9).

Any further inquiries, submissions or correspondence regarding this hearing should be filed in an original and two copies with Mr. Garrett at the Departmental Grant Appeals Board, Room 451, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, where the record of this hearing will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent. For convenience, please refer to Docket No. 87-170 assigned to these proceedings.

Dated: November 18, 1987.

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

[FR Doc. 87-27015 Filed 11-23-87; 8:45 am]

BILLING CODE 4150-04-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of Portions of Three Connecticut State Plan Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on January 6, 1988 in Boston, Massachusetts to reconsider our decision to disapprove portions of Connecticut State Plan Amendments 86-55, 87-51 and 87-50.

Closing date: Request to participate in the hearing as a party must be received by the Docket Clerk within 15 days after publication.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove portions of three Connecticut State Plan Amendments.

Section 1116 of the Social Security Act and 45 CFR Part 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a dispproval of a State or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that information in a notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any

interested peson or ogranization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether portions of Connecticut SPAs 86–55, 87–51 and 87–50 relating to income standards under the State's Supplemental Payment program violates Federal regulations at 42 CFR 435.230.

In general, the Medicaid statute requires States to use the eligibility criteria of the Supplemental Security Income (SSI) program in determining Medicaid eligibility of aged, blind, and disabled individuals and to use the rules of the Aid to Families with Dependent Children (AFDC) program in determining Medicaid eligibility of AFDC-related individual (sections 1902(a)(10)(A) and 1902(a)(10)(C)(i)(III) of the Act). Section 1902(a)(10)(A)(ii)(IV) of the Act permits States to provide Medicaid to individuals who are receiving, eligible to receive, or, who, if they were not in a medical institution would be eligible to receive a State supplementary payment (SSP). The law also permits States to apply rules affecting aged, blind, and disabled persons that are more restrictive than SSI but no more restrictive than the rules employed under the State's approved January 1, 1972 medical assistance plan (section 1902(f) of the Act). States electing to use more restrictive rules than those employed under the SSI program may use rules no more liberal than those used by the SSI program and no more restrictive than those applied under the State's January 1, 1972 Medicaid plan. (See section 1902(f) of the Act and 42 CFR 435.121.) However, where a State which uses more restrictive criteria elects to provide Medicaid to individuals who receive or are eligible to receive an SSP, the regulations at 42 CFR 435.230 specify the characteristics a payment must have in order to qualify as an SSP for Medicaid purposes. Although 42 CFR 435.121 authorizes States to use more restrictive Medicaid eligibility requirements for their aged, blind, and disabled recipients, it does not permit States to vary the conditions under which an additional cash payment is paid in order to be considered to be an SSP for Medicaid.

The rules governing Medicaid eligibility based on receipt of a state supplement are set forth at 42 CFR 435.230. That section specifies, among other requirements, that the payments under the optional supplement program must be "equal to the difference between the individual's countable income and *the income standard* used to determine eligibility for supplement." Thus, the State must employ an "income standard" to determine eligibility and must pay the difference between countable income and that income standard.

As part of SPA 86–55, 87–51 and 87–50, Connecticut submitted Supplement 6 to Attachment 2.6A. This attachment purports to set forth the State's income standards for eligibility under its SSP program. In its addendum to Supplement 6 "standard for optional state supplements," Connecticut set forth its "variable needs standard." In this "standard" no monetary value is assigned to certain elements (e.g., telephone allowance, laundry allowance, transportation, and garbage allowance for individuals living at home by themselves or with others), and the monetary value to be assigned with respect to other elements (e.g., board and care) in unclear. As a consequence, HCFA has been unable to determine that there is in fact an *income standard* used by the State and that its supplement meets the requirements of § 435.230 by paying the difference between the income standard and countable income.

The notice to Connecticut announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Stephen B. Heintz, Commissioner
Department of Income Maintenance, 110 Bartholomew Avenue, Hartford, Connecticut 06106.

Dear Mr. Heintz: This is to advise you that your request for reconsideration of the decision to disapprove portions of Connecticut SPAs 86–55, 87–51 and 87–50 was received on October 20, 1987. Portions of Connecticut SPAs 86–55, 87–51 and 87–50 relate to various policies for determining eligibility for Medicaid.

The issues in this matter are: 1) whether Connecticut's State Supplementary Payment (SSP) which contains certain variable needs standards uses an "income standard" to determine eligibility for the SSP; and, 2) whether the variable needs standard satisfies the requirement of 42 CFR 435.230(b)(2) that SSP payments be equal to the difference between the individual's countable income and the income standard used to determine eligibility for the supplement, in order for eligibility for or receipt of the SSP payment to qualify an individual for Medicaid.

I am scheduling a hearing on your request to be held on January 6, 1988 at 9:00 a.m. in Room 1211, JFK Building, Boston, Massachusetts. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely,

William L. Roper, M.D.,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Dometic Assistance Program No. 13.714, Medicaid Assistance Program.)

Dated: November 18, 1987.

William L. Roper,
Administrator, Health Care Financing Administration.

[FR Doc. 87–26996 Filed 11–23–87; 8:45 am]
BILLING CODE 4120–03–M

Health Resources and Services Administration

Program Announcement and Proposed Funding Preferences for Grants for Geriatric Education Centers; Correction

In Federal Register Document 87–26115, page 43399 issue of Thursday, November 12, 1987, an incorrect date appears on page 43400, in the first column, 3rd line from the bottom. The date should read January 15, 1988.

David N. Sundwall,
Administrator, Assistant Surgeon General.

[FR Doc. 87–27012 Filed 11–23–87; 8:45 am]
BILLING CODE 4160–15–M

Public Health Service

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service, HHS.

ACTION: Publication of minor changes to system of record notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Public Health Service (PHS) is publishing minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: PHS has completed the annual review of its systems of records and is publishing below those minor changes which affect the public's right or need to know, such as system deletions, title changes, and changes in the system location of records or the address of system managers.

1. PHS has deleted the following systems during the year:

09–30–0005—Saint Elizabeths Hospital Research Subjects Data Records, HHS/ADAMHA/NIMH;
09–30–0006—Saint Elizabeths Hospital Medical Support Programs File Systems, HHS/ADAMHA/NIMH;
09–30–0007—Saint Elizabeths Hospital Clinical Support Services Record System, HHS/ADAMHA/NIMH;
09–30–0008—Saint Elizabeths Hospital Social Services Record System, HHS/ADAMHA/NIMH;
09–30–0009—Saint Elizabeths Hospital Multidisciplinary Raw Data Consultation Files, HHS/ADAMHA/NIMH;
09–30–0010—Saint Elizabeths Hospital Juvenile Education Monitoring System, HHS/ADAMHA/NIMH;
09–30–0011—Saint Elizabeths Hospital Emergency Psychiatric Service Non-Admission File System, HHS/ADAMHA/NIMH;
09–30–0012—Saint Elizabeths Hospital Pre-Service Education Records, HHS/ADAMHA/NIMH;
09–30–0013—Saint Elizabeths Hospital Training Videotape Records, HHS/ADAMHA/NIMH;
09–30–0014—Saint Elizabeths Hospital Financial System, HHS/ADAMHA/NIMH;
09–30–0015—Saint Elizabeths Hospital General Security System, HHS/ADAMHA/NIMH;
09–30–0016—Saint Elizabeths Hospital Patients' Personal Property Record System, HHS/ADAMHA/NIMH;
09–30–0017—Saint Elizabeths Hospital Legal Office Record System, HHS/ADAMHA/NIMH;
09–30–0018—Saint Elizabeths Hospital Area D Community Mental Health Center Citizens Advisory Group Records, HHS/ADAMHA/NIMH;
09–30–0019—Saint Elizabeths Hospital Court-Ordered Forensic Investigatory Materials File, HHS/ADAMHA/NIMH;
09–30–0024—Saint Elizabeths Hospital General Administrative Record System, HHS/ADAMHA/NIMH;
09–30–0026—Saint Elizabeths Hospital Research Project Records, HHS/ADAMHA/NIMH;
09–30–0028—Saint Elizabeths Hospital General Medical/Clinical Records System and Related Indexes, HHS/ADAMHA/NIMH;
09–30–0031—Saint Elizabeths Hospital Management Information Reporting System, HHS/ADAMHA/NIMH.

On October 1, 1987, in accordance with Pub. L. 98–621, the "Saint Elizabeths Hospital and District of Columbia Mental Health Services Act," Saint Elizabeths Hospital was transferred to the District of Columbia. The above Privacy Act systems of records have been transferred to the District of Columbia, which is assuming all responsibility for the records. Therefore, PHS has deleted these systems from its inventory of active systems of records.

09–25–0004—Administration: Registry of Individuals Exposed to Chemical Carcinogens, HHS/NIH/ORS.

The system has been terminated. Some of the records were subsumed into another system of records, and the remaining records have been destroyed.

09–25–0138—Biomedical Research: Studies of Possible Influence on Cognitive and Emotional Development of Children, HHS/NIH/NICHD.

The studies have been terminated and the records were destroyed.

09–15–0027—National Health Service Corps (NHSC) and Indian Health Service (IHS) Pre-Application Recruitment and Provider File, HHS/HRSA/BHCDA.

Data from this system of records have been combined with system 09–15–0037, "Public Health Service (PHS) and National Health Service Corps (NHSC) Health Care Provider Records System, HHS/HRSA/BHCDA", 52 FR 26122, June 8, 1987.

2. A reorganization in the PHS Commissioned Corps requires changes in the titles of the following five systems of records. The notices for these systems were last published at 51 FR 42354–42368, November 24, 1986.

09–37–0002, PHS Commissioned Corps General Personnel Records, HHS/OASH/OSG;
09–37–0003, PHS Commissioned Corps Medical Records, HHS/OASH/OSG;
09–37–0005, PHS Commissioned Corps Board Proceedings, HHS/OASH/OSG;
09–37–0006, PHS Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/OASH/OSG;
09–37–0008, PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OSG.

3. The organizational transfer of the National Center for Health Statistics (NCHS) from the Office of the Assistant Secretary for Health (OASH) to the Centers for Disease Control (CDC) occurred on June 7, 1987. Accordingly, the following NCHS systems have been renumbered to reflect this organizational realignment:

09–20–0163 (formerly 09–37–0009) Applicants for National Center for Health Statistics Technical Assistance, HHS/CDC/NCHS, 51 FR 42368, November 24, 1986;
09–20–0164 (formerly 09–37–0010) Health and Demographic Surveys Conducted in Probability Samples of the U.S. Population, HHS/CDC/NCHS, 49 FR 37693, September 25, 1984;
09–20–0165 (formerly 09–37–0011) Health Manpower Inventories and Surveys, HHS/CDC/NCHS, 49 FR 37694, September 25, 1984;
09–20–0166 (formerly 09–37–0012) Vital Statistics for Births, Deaths, Fetal Deaths, Marriages and Divorces Occurring in the United States During Each Year, HHS/CDC/NCHS, 49 FR 37695, September 25, 1984;
09–20–0167 (formerly 09–37–0013) Health Resources Utilization Statistics, HHS/CDC/NCHS, 49 FR 37697, September 25, 1984;
09–20–0168 (formerly 09–37–0014) Curricula Vitae of Consultants to the National Center for Health Statistics, HHS/CDC/NCHS, 51 FR 42369, November 24, 1986;
09–20–0169 (formerly 09–37–0016) Users of Health Statistics, HHS/CDC/NCHS, 51 FR 42371, November 24, 1986.

4. Other minor system notice changes affecting individual categories are published below.

Dated: November 16, 1987.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

Office of the Assistant Secretary for Health

09–37–0005

SYSTEM NAME:

PHS Commissioned Corps Board Proceedings, HHS/OASH/OM.

Minor alterations have been made to this system notice to include records from several new board processes created for the admininstration of the PHS Commissioned Corps. The portion of the record system notice entitled "Categories of Records in the System" is amended by adding #11, #12, and #13 as follows:

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

11. Chief Professional Officer Nomination Board files, consisting of recommendations from PHS programs and officials, curriculum vitae for all those considered during the nomination process, evaluation materials concerning each candidate, and other material used by the Board in its deliberations;

12. Flag Officer Billet Assignment Board and Flag Officer Nomination Board records consisting of recommendations from PHS programs and officials, curriculum vitae for all those concerned during the nomination process, evaluation materials concerning each candidate, and other material used by the Boards during their deliberations;

13. Records from other Board processes instituted as part of the administration of the PHS Commissioned Corps personnel system.

* * * * *

09-37-0019

SYSTEM NAME:

National Medical Expenditure Survey, HHS/OASH/NCHSR.

Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

* * * * *

SYSTEM LOCATION:

National Center for Health Services Research and Health Care, Technology Assessment, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

At selected contractor locations. A current list of contractor sites is available by writing the System Manager at the address below.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Senior Research Manager, National Health Care Expenditures Study, Division of Intramural Research, National Center for Health Services Research and Health Care, Technology Assessment, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

* * * * *

Alcohol, Drug Abuse, and Mental Health Administration

09-30-0023

SYSTEM NAME:

Records of Contracts Awarded to Individuals, HHS/ADAMHA/OA.

Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

* * * * *

SYSTEM LOCATION:

National Institute on Drug Abuse, Contracts Management Branch, Room 10–49, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

National Institute on Alcohol Abuse and Alcoholism, Contracts Management Branch, Room 14C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

National Institute of Mental Health, Contracts Management Branch, ORM, Room 15–81, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Washington National Records Center, 4205 Suitland Road, Washington, D.C. 20409.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301, 503, 502 and 504) (42 U.S.C. 241, 290aa–2, 290aa–1, and 290aa–3). NIDA: Drug Abuse Prevention, Treatment and Rehabilitation Act, Section 410 (21 U.S.C. 1177). NIAAA: Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Section 311 (42 U.S.C. 4577). NIMH: Community Mental Health Centers Act.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

National Institute on Drug Abuse, Chief, Contracts Management Branch, OPS, Room 10–49, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

National Institute on Alcohol Abuse and Alcoholism, Chief, Contracts Management Branch, Room 14C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

National Institute of Mental Health, Chief, Contracts Management Branch, Room 15–81, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

* * * * *

09-30-0027

SYSTEM NAME:

Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Prevention, Fellowships, Clinical Training, Community Programs. HHS/ADAMHA/OA.

Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

* * * * *

SYSTEM LOCATION:

National Institute on Drug Abuse, Grants Management Branch, Room 10–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

National Institute on Alcohol Abuse and Alcoholism, Grants Management Branch, Room 16–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

National Institute of Mental Health, Grants Management Branch, ORM, Room 7C–23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Washington National Records Center, 4205 Suitland Road, Washington, D.C. 20409.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer for Kentucky Contract, State Planning and Human Resources Development Branch, Division of Education and Service Systems Liason, National Institute of Mental Health, Room 7–103, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

* * * * *

09-30-0038

SYSTEM NAME:

Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse. HHS/ADAMHA/NIDA.

Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

* * * * *

SYSTEM LOCATION:

Department of Psychiatry, School of Medicine, University of North Carolina, Chapel Hill, North Carolina 27514

Research Triangle Institute, Life Sciences Division, Research Triangle Park, North Carolina 27154

University of California, San Francisco, Langley Porter Psychiatric Institute, San Francisco, California 94143

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Normal, healthy adults who voluntarily participate in studies on the pharmacokinetics of drugs of abuse, at the University of North Carolina, during the period November 1979 through September 1984, and at the Research Triangle Institute and Langley Porter Psychiatric Institute, during the period September 1987 through September 1992.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. We may disclose to a congressional office the record of an individual in response to a verified inquiry from the congressional office made at the written request of the individual.

2. ADAMHA contractors use the records in this system to accomplish the research purpose for which the records are collected. The contractors are required to maintain Privacy Act safeguards with respect to such records.

* * * * *

RETENTION AND DISPOSAL:

The records will be kept no longer than September 1997 (five years after the anticipated completion of the studies). At that time, the NIDA project officer will authorize in writing the clinical investigators to destroy the records by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer, Pharmacokinetic Studies on Drugs of Abuse, Division of Preclinical Research, Alcohol, Drug Abuse, and Mental Health Administration, Room 10A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager listed above. Provide the following information: Subject-participant's full name and a letter of request (or permission, if the requester is not the subject-participant) with notarized signature of the individual who is the subject of the record, approximate date(s) of experiment(s) in which the individual participated, and drug name (if known). In addition, an individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its content at the representative's discretion.

* * * * *

Health Resources and Services Administration

09–15–0001

SYSTEM NAME:

Division of Federal Occupational and Beneficiary Health Services, Health Counseling Records, HHS/HRSA/BHCDA Minor alterations have been made to this system notice. The following category should be revised in its entirety:

* * * * *

SAFEGUARDS:

1. *Authorized Users:* DFOBHS Health Unit Personnel, physicians, nurses, and other allied health professionals.

2. *Physical Safeguards:* All documents are secured during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. *Procedural Safeguards:* All users of personal information in connection with the performance of their jobs protect information from the public view and from unauthorized personnel entering an unsupervised area. Access to records is strictly limited to those staff members trained in accordance with the DFOBHS Manua1 of Operations. Patient-authorized release of records to a third party will only be accomplished when the third party has a suitable system of records, such as those meeting the requirements of 5 CFR Part 293, designed to minimize unauthorized access. Contractors are required to maintain confidentiality safeguards with respect to these records. These safeguards are in accordance with DHHS Chapter 45–13 and supplementary chapter PHS.hf: 45–13 of the General Administration Manual.

* * * * *

09–15–0052

SYSTEM NAME:

Nurse Practitioner Traineeships, HHS/HRSA/BHPr. Minor alterations have been made to this system notice. The following categories should be replaced in their entirety:

* * * * *

SYSTEM NAME:

Nurse Practitioner and Midwife Program, HHS/HRSA/BHPr.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals selected to receive nurse practitioner and nurse midwife traineeships by schools participating in the program.

* * * * *

09–15–0037

SYSTEM NAME:

Public Health Service (PHS) and National Health Service Corps (NHSC) Health Care Provider Records System, HHS/HRSA/BHCDA.

A minor alteration has been made to the system location:

SYSTEM LOCATION:

Immediately following Washington National Records Center, 4205 Suitland Road, Suitland, Maryland, 20409, add:

* * * * *

PHS Health Data Center, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.

* * * * *

National Institutes of Health

09–25–0008

SYSTEM NAME:

Administration: Radiation Workers Monitoring. HHS/NIH/ORS.

A minor alteration has been made to this system notice. The following category should be revised in its entirety:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Data and Analytical Services Section, Radiation Safety Branch, Division of Safety, NIH, Building 21, Room 233, 9000 Rockville Pike, Bethesda, Maryland 20892.

* * * * *

09–25–0039

A minor alteration has been made to this system notice reflecting an organization change as shown in the system name.

* * * * *

SYSTEM NAME:

Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIDDK.

* * * * *

09–25–0042

SYSTEM NAME:

Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR.

A minor alteration has been made to this system notice. The following category should be revised in its entirety:

* * * * *

SYSTEM LOCATION:

Building 10, Room 6S255, NIH, 9000 Rockville Pike, Bethesda, Maryland 20892.

Write to the System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

* * * * *

09–25–0000

SYSTEM NAME:

Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI.

Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

* * * * *

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 3B18, 9000 Rockville Pike, Bethesda, Maryland 20892

Frederick Cancer Research Facility, Building 567, Room 129, Frederick, Maryland 21701

NCI, Navy Hospital, Building 8, Room 3146, Bethesda. Maryland 20814

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Head, Biostatistic and Data Management Section, Building 10, Room 130103, 9000 Rockville Pike, Bethesda, Maryland 20892

Chief, Clinical Research Branch, Frederick Cancer Research Facility, Building 567, Room 129, Frederick, Maryland 21701
Deputy Branch Chief, NCI—Navy Medical Oncology Branch, Building 8, Room 5101, Bethesda, Maryland 20814
* * * * *

09-25-0078

SYSTEM NAME:

Administration: Consultant File, HHS/NIH/NHLBI.

A minor alteration has been made to this system notice. The following category should be revised in its entirety:

* * * * *

Notification Procedure:

To determine if a record exists, contact:

National Institutes of Health, Privacy Act Coordinator, NHLBI, Building 31, Room 5A08, 9000 Rockville Pike, Bethesda Maryland 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

* * * * *

09-25-0112

SYSTEM NAME:

Extramural Awards: Research, Research Training, Fellowship and Construction Application and Awards, HHS/NIH/OD.

Minor alterations have been made to this system notice. The following portion of the categories should be revised:

Appendix I—System Location

* * * * *

National Heart, Lung and Blood Institute, Westwood Building, Room 4A09, 5333 Westbard Avenue, Bethesda, Maryland 20892—(substitute for the second system location)
National Institute of Environmental Health Sciences, Grants Management Officer, Building 2, Room 204, 104 Alexander Drive, Research Triangle Park, North Carolina 27709—(substitute for the ninth system location)

* * * * *

Appendix II—System Managers and Address

* * * * *

National Heart, Lung and Blood Institute, Division of Extramural Affairs, Grants Management Officer, Westwood Building, Room 4A10, 5333 Westbard Avenue, Bethesda, Maryland 20892—(substitute for the second System manager and Address)

* * * * *

09-25-0133

Minor alterations have been made to this system notice reflecting an organization change. The following categories should be revised in their entirety:

* * * * * *

SYSTEM NAME:

Clinical Research: Kidney Transplant Histocompatibility Study (KTHS), HHS/NIH/NIDDK.

* * * * *

SYSTEM MANAGER AND ADDRESS:

Chief, Genetics and Transplantation Biology Branch, IAIDP, National Institutes of Diabetes and Digestive and Kidney Diseases, NIH, Westwood Building, Room 754, 5333 Westbard Avenue, Bethesda, Maryland 20892.

* * * * *

09-25-0140

SYSTEM NAME:

International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Foreign Scientists Assistance Branch, Fogarty International Center, National Institutes of Health, 9000 Rockville Pike, Building 16A, Room 101, Bethesda, Maryland 20892.

* * * * *

RECORD SOURCE CATEGORIES:

Subject individual, persons supplying references and other federal agencies.

* * * * *

STORAGE:

Records are stored in file folders, file cards and computer disks.

* * * * *

09-25-0156

SYSTEM NAME:

Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD.

Minor alterations have been made to this system notice. The following categories should be revised as indicated:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who provide information or opinions that are useful in evaluating programs or activities of the NIH, other persons who may participate in or benefit from NIH programs or activities; or other persons included in evaluation studies for purposes of comparison. Such individuals may include: (1) Participants in research studies; (2) applicants for and recipients of grants, fellowships, traineeships or other awards; (3) employees, experts and consultants; (4) members of advisory committees; (5) other researchers, health care professionals or individuals who have or are at risk of developing diseases or conditions studied by NIH; (6) persons who provide feedback about the value or usefulness of information they receive about NIH programs, activities or research results; (7) persons who have received Doctorate level degrees from U.S. institutions.

* * * * *

Appendix I: System Managers and Address

* * * * *

National Institute of Dental Research (NIDR), Chief, Planning and Evaluation Section, Building 31, Room 2036, Bethesda, Maryland 20892—(substitute for the eighth System Managers and Address)
National Institute of Allergy and Infectious Diseases (NIAID), Chief, Planning and Program Analysis Branch, OAM, Building 31, Room 7A16, 9000 Rockville Pike, Bethesda, Maryland 20892—(substitute for the sixth System Managers and Address)

Appendix II: Notification and Access Officials

* * * * *

National Institute of Dental Research (NIDR), Chief, Planning and Evaluation Section, Building 31, Room 2C36, Bethesda, Maryland 20892—(substitute for the eighth Notification and Access Official)

* * * * *

09-25-0046

SYSTEM NAME:

Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID.

A minor alteration has been made to this system notice. The following category should be revised in its entirety:

* * * * *

SYSTEM LOCATION:

Building 7, Rooms 104 and 202, National Institute of Allergy and Infectious Diseases, NIH, 9000 Rockville Pike, Bethesda, Maryland 20892.

Write to the System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

* * * * *

09-25-0049

SYSTEM NAME:

Clinical Research: Atlanta Federal Prison Malaria Research Project, HHS/NIH/NIAID.

Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

* * * * *

SYSTEM LOCATION:

Building 5, Rooms 124, National Institute of Allergy and Infectious Diseases, NIH, 9000 Rockville Pike, Bethesda, Maryland 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Head, Malaria Section, National Institute of Allergy and Infectious Diseases, NIH, Building 5, Room 124, 9000 Rockville Pike, Bethesda, Maryland 20892.

* * * * *

09-25-0115

SYSTEM NAME:

Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.

Minor alterations have been made to this system notice. The following categories should be inserted or revised in their entirety:

* * * * *

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to NIAID staff whose duties require the use of such information. Authorized users are located in the Clinical Epidemiological Studies Branch, Microbiology and Infectious Diseases Program, NIAID. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the system manager.

Physical Safeguards: Building is locked during off duty hours.

Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records which are judged to have no further reference value will be destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Clinical and Epidemiological Studies Branch, National Institute of Allergy and Infectious Diseases, 9000 Rockville Pike, Building 31, Room 7A52, Bethesda, Maryland 20892.

* * * * *

09-25-0117

SYSTEM NAME:

International Activities: US-Japan Program Panel Members, HHS/NIH/NIAID.

Minor alterations have been made to this system notice. The following categories should be revised in their entirety:

* * * * *

SYSTEM LOCATION:

5333 Westbard Avenue, Westwood Building, Room 737, Bethesda, Maryland 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Parasitology and Tropical Diseases Branch, MIDP, National Institute of Allergy and Infectious Diseases, 5333 Westbard Avenue, Westwood Building, Room 737, Bethesda, Maryland 20892.

* * * * *

09-25-0143

SYSTEM NAME:

Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID.

A minor alteration has been made to this system notice. The following category should be replaced in its entirety:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Epidemiology and Biometry Section, MIDP, National Institute of Allergy and Infectious Diseases, 5333 Westbard Avenue, Westwood Building, Room 739, Bethesda, Maryland 20892

Chief, Epidemiology Branch, AIDSP, National Institute of Allergy and Infectious Diseases, 5333 Westbard Avenue, Westwood Building, Room 3A-12, Bethesda, Maryland 20892.

* * * * *

[FR Doc. 87-27011 Filed 11-23-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-87-1757]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information

submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Low-Income Public Housing Financial Statements
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: The information, prepared by public housing agencies (PHAs) and Indian Housing Authorities (IHAs), is used to track the major accounts of the HUD prescribed PHA/IHA accounting system and provide essential financial information on the operations of PHAs/IHAs. The information is needed to determine if account balances are correct; to monitor effectiveness and efficiency of PHAs/IHAs; and to identify potential problems early.
Form Number: HUD–53049, 52595, 52596, 52598, 52599, 52603, and 52656
Respondents: State or Local Governments and Non-Profit Institution
Frequency of Respondents: Semi-annually, Annually, and On Occasion
Estimated Burden Hours: 21,971
Status: Reinstatement
Contact: John T. Comerford, HUD, (202) 426–1872, John Allison, OMB, (202) 395–6880

Proposal: Periodical Estimate for Partial Payment and Related Schedules
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: The Periodical Estimate for Partial Payment and Related Schedules are required for projects developed under Public Housing Development Regulations. These forms are used monthly by the general contractor constructing a public housing project under the conventional bid method in order to establish the amount due from a public housing agency (PHA) for work completed during the current month. These forms are needed so that a PHA can certify what funds will be disbursed to a contractor.
Form Number: HUD–51001, 51002, 51003, and 51004
Respondents: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions
Frequency of Response: Monthly
Estimated Burden Hours: 19,913
Status: Extension
Contact: William C. Thorson, HUD, (202) 755–6460, John Allison, OMB, (202) 395–6880

Proposal: Report on Tenants Accounts Receivable
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: Under section 6(c)(4) of the United States Housing Act of 1937, this information is used to assure sound management practices by the Public Housing Agencies (PHAs). The PHAs prepare and submit the form to the HUD Field Offices and HUD uses it to monitor the effectiveness of rent collection procedures employed by PHAs.
Form Number: HUD–52295
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Response: Semi-annually
Estimated Burden Hours: 1,760
Status: Reinstatement
Contact: John T. Comerford, HUD, (202) 426–1872 John Allison, OMB, (202) 395–6880

Proposal: Indian Community Development Block Grant Program Information Reporting Requirement
Office: Community Planning and Development
Description of the Need for the Information and its Proposed Use: The Community Development Block Grant (CDBG) Program for Indian Tribes and Alaskan Native Villages, authorized under section 107 of the Housing and Community Development Act of 1974, is an annual program whereby grants are awarded based upon yearly competitions. The program is needed for HUD to select the best projects for funding and in monitoring grants to insure that grantees are making proper use of Federal funds.
Form Number: SF–424, HUD–4011, 4121, 4122, 4123, 4125, and 4126
Respondents: State or Local Governments
Frequency of Response: On Occasion and Anually
Estimated Burden Hours: 16,200
Status: Extension
Contact: Clarence E. Hix, HUD, (202) 755–6092, John Allison, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 13, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 27046 Filed 11–23–87; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[U–56301]

Proposed Reinstatement of Terminated Combined Hydrocarbon Lease; Utah

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of combined hydrocarbon lease U–56301 for lands in Carbon County, Utah, was timely filed and required rentals and royalties accruing from May 1, 1987, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16-⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U–56301 as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–26989 Filed 11–23–87; 8:45 am]
BILLING CODE 4310–DQ–M

[CO–070–08–4212–13; C–46589]

Realty Action; Exchange of Lands in Eagle County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of lands.

SUMMARY: Pursuant to sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs Resource Area, has identified parcels of public and private land as preliminarily suitable for exchange.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this proposed exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION:

The following-described lands have been determined to be preliminarily suitable for exchange under sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Selected Public Land

Parcel 1—97.48 Acres

T. 5 S., R. 85 W.,
Sec. 2: Lots 7 and 8
Sec. 11: Lot 1, NW¼NE¼

Offered Private Land

Parcel A—Approximately 38.21 Acres

*T. 4 S., R. 85 W.,
Portion of Tract 42 north of Interstate–70

Parcel B—Approximately 41.24 Acres

*T. 4 S., R. 85 W.,
Portion of Tract 43 north of Interstate–70

Parcel C—Approximately 3.54 Acres

*T. 5 S., R. 85 W.,
Portion of Tract 50 and Tract 52 north of Interstate–70

Parcel D—Approximately 6.05 Acres

*T. 5 S., R. 85 W.,
Portion of Tract 45A, Tract 47, and Tract 50 north of Interstate–70.
Easement for public access within Tract 51 and Tract 53, T. 5 S., R. 85 W., from U.S. Highway 6 to the north boundary line of Lot 7, Sec. 2, T. 5 S., R. 85 W.
Any adjustment to selected public land to equalize values would be made in T. 5 S., R. 85 W., Sec. 11, NW¼NE¼.

Note: Asterisk (*) denotes metes and bounds description.

These 97.48 acres of public land under the jurisdiction of the Bureau of Land Management have been identified as preliminarily suitable for exchange. The determination has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and Terrill Knight.

In the proposal, 89.04 acres of offered private land with public values and an easement for public access would be exchanged for 97.48 acres of public land which have been identified for disposal. The exchange proposal has been made to facilitate the consolidation of public land holdings. The consolidation would increase managerial efficiency and provide public access to natural resources on public lands being managed by the Bureau.

The values of the lands to be exchanged have been determined to be approximately equal. Upon completion of the final appraisal of the lands, the acreages will be adjusted or money will be used to equalize the exchange values.

Terms and Conditions

The following reservations would be made in patent issued for public land:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States of all mineral deposits of known value.

3. A reservation for all existing and valid land uses, including grazing leases, unless waived.

4. The reservation of power line right-of-way C–26738.

5. The reservation of power line right-of-way C–0118292.

6. The reservation for public access on the existing road, C–46590.

The publication of the notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriations under the public land laws, including the mining laws and the mineral leasing laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

Barry C. Cushing,

Acting District Manager, Grand Junction District.

[FR Doc. 87–26993 Filed 11–23–87; 8:45 am]

BILLING CODE 4310–JB–M

[ES–030–08–4212–14; ES–00157–005; ES–35425]

Realty Action; Sale of Public Land in Morgan County, MO; Modified—Competitive Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of public land in Morgan County, Missouri; Modified—Competitive Sale ES–35425.

SUMMARY: The following public land has been examined and determined to be suitable for sale under section 203(a)(1) of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value shown below. The sale also includes conveyance of the mineral estate under the authority of section 209(b)(1)(l) of FLPMA.

Fifth Principal Meridian, Missouri

T. 41N., R. 16W., Sec. 21, SW¼NW¼, Morgan County, containing 40 acres.

Appraised Fair Market Value: $6,800

Date of Sale: February 10, 1988, at 3:00 p.m.

Place of Sale: Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203.

Minimum Bid and Requirements: The minimum bid is the appraised fair market value of $6,800.00. Potential purchasers are required to submit 20 percent of their bid as down payment. *An additional $50.00* nonrefundable filing fee for the mineral estate *MUST* accompany the bid deposit. The bid and deposit must be enclosed in a sealed envelope clearly marked "Public Sale ES–35425" on the left hand side of the envelope. The successful high bidder will be allowed 180 days to submit the remainder of the bid price. If the remainder of the bid price has not been received from the successful bidder within the specified time period, the bid deposit will be forfeited. If for any reason the land remains unsold after the specified sale date, the land will remain available for sale over the counter until sold.

Example of minimum bid: If your bid is $6,800, you must submit 20 percent ($1,360) plus $50.00 for a total of $1,410. If your bid is $7,000, you must submit 20 percent ($1,400) plus $50.00 for a total of $1,450.

Bidder Qualifications: Purchasers must be a citizen of the United States and 18 years old or older; a corporation, State, State instrumentality or political subdivision, or other legal entity, subject

to the laws of any State or in United States.

There are no known mineral values in the land, therefore, the mineral estate is also being transferred. The land is being offered for sale subject to a preference consideration to allow Mr. and Mrs. Darrell Polly, Jr., and Mr. Larry A. Gerken, purported title holders, the right of first refusal to purchase the parcel at the appraised fair market value. If they fail to exercise their preference consideration, the land will be for sale using the competitive bidding procedure. Under that procedure, the parcel will be conveyed to the qualified bidder who bids the highest price. The sale will be conducted by having a bid submitted to this office in a sealed envelope.

Publication of this notice will segregate the land from all appropriation, including the mining laws, for 270 days, or until issuance of patent, whichever occurs first. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager at the following address: Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

For Further Information: Detailed information concerning this sale is available at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203; or by calling Duane Marti at (414) 291–4429.

Leon R. Kabat,

Acting District Manager.

[FR Doc. 87–26985 Filed 11–23–87; 8:45 am]

BILLING CODE 4310-GJ-M

Fish and Wildlife Service

Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin; Final Environmental Assessment; Finding of No Significant Impact

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availaiblity.

SUMMARY: In accordance with 40 CFR 1506.6(b), notice is hereby given that National Environmental Policy Act compliance documents addressing a recovery program for endangered and rare fish species in the Upper Colorado River Basin have been completed and are available for distribution. The goal of the program in the Upper Basin is to recover and delist three endangered fish species (Colorado squawfish, humpback chub, bonytail chub) and manage a rare fish species (razorback sucker) so it will not require the protection of the Endangered Species Act. This goal is to be accomplished in a manner that is consistent with State water rights systems, interstate compacts, and court decrees that allocate the rights to use Colorado River water among the States. The Secretary of the Interior has been requested to approve Department of the Interior participation in this program. Based upon the information in the environmental assessment (EA), it has been determined that Secretarial approval does not constitute a major Federal action having a significant impact on the environment. Therefore, a Finding of No Significant Impact (FUNSI) was prepared.

DATE: The EA and FONSI will be available for distribution to the public on November 19, 1987.

ADDRESS: Requests for these documents should be addressed to Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Robert Jacobsen, Assistant Regional Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, (303) 236–7398, FTS 776–7398.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare the environmental assessment was published in the **Federal Register** on July 30, 1986, and republished in its entirety on August 12, 1986. This notice provides detailed information on the Proposed Action and alternatives proposed for study. Copies of the final "Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin," EA, and FONSI will be mailed to all parties responding to the Notice of Intent. In addition these documents will be mailed to over 150 organizations and individuals expressing an interest or presumed to have an interest in this program.

Date: November 13, 1987.

Galen L. Buterbaugh,

Regional Director.

[FR Doc. 87–26982 Filed 11–23–87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Phillips Petroleum Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Phillips Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 4542 and 4544, Blocks 639 and 649, respectively, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port Aransas, Texas.

DATE: The subject DOCD was deemed submitted on November 16, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). These practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: November 16, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–26994 Filed 11–23–87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 14, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register

criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 9, 1987.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Fairfield County

Norwalk, *Norwalk Green Historic District,* Roughly bounded by Smith & Park Sts., Boston Post Rd., East, & Morgan Aves.
Stamford, *Church of the Holy Name (Downtown Stamford Ecclesiastical Complexes TR),* 305 Washington Blvd. & 4 Pulaski St.
Stamford, *St. Benedict's Church (Downtown Stamford Ecclesiastical Complexes TR),* 1A & 1B Saint Benedict's Circle
Stamford, *St. John's Protestant Episcopal Church (Downtown Stamford Ecclesiastical Complexes TR),* 628, 628b, & 628c, Main St.
Stamford, *St. Luke's Chapel (Downtown Stamford Ecclesiastical Complexes TR),* 714 Pacific St.
Stamford, *St. Mary's Church (Downtown Stamford Ecclesiastical Complexes TR),* 540 & 566 Elm St.
Stamford, *Unitarian-Universalist Church (Downtown Stamford Ecclesiastical Complexes TR),* 20 Forest St.
Stamford, *Zion Lutheran Church (Downtown Stamford Ecclesiastical Complexes TR),* 132 Glenbrook Rd.

New Haven County

Guilford, *Meeting House Hill Historic District,* Roughly bounded by Long Hill, Great Hill, & Ledge Hill Rds.

FLORIDA

Pinellas County

Clearwater, *Harbor Oaks Residential District,* Roughly bounded by Druid Rd., S. Fort Harrison Ave., Lotus Path, & Clearwater Harbor

GEORGIA

Cobb County

Clarkdale, *Clarkdale Historic District,* Powder Springs-Austell Rd.

LOUISIANA

Catahoula Parish

Jonesville vicinity, *Marengo Plantation House,* U.S. 84, 6 mi. W. of Jonesville

West Baton Rouge Parish

Port Allen vicinity, *Poplar Grove Plantation House,* 3142 N. River Rd.

MASSACHUSETTS

Middlesex County

Cambridge, *Harvard Yard Historic District (Cambridge MRA),* Harvard Yard bounded by underpass, Broadway & Quincy Sts., Mass Ave., & Peabody St.

MICHIGAN

Jackson County

Jackson, *Wilcox, Andrew, House,* 231 E. High St.

Ottawa County

Spring Lake, *Bilz, Aloys, House,* 107 S. Division St.

MISSOURI

Pike County

Louisiana, *Stark, Gov. Lloyd Crow, House and Carriage House,* 1401 Georgia St.

NEW YORK

Columbia County

New Forge, *House at New Forge,* 128 New Forge Rd.

OHIO

Gallia County

Rio Grande, *Wood Old Homestead,* 1253 Jackson Pike

Pickaway County

Circleville, *Walling, Ansel T., House,* 146 W. Union St.

Richland County

Shiloh, *Ferrell, Silas, House,* 25 E. Main St.

Stark County

Alliance, *Earley-Hartzell House,* 840 N. Park Ave.

TEXAS

Taylor County

Abilene, *Swenson, William and Shirley, House,* 1726 Swenson Ave.

VIRGINIA

James City County

Toana vicinity, *Windsor Castle,* 1812 Forge Rd.

[FR Doc. 87-27017 Filed 11-23-87; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 395-7313.

Title: State-Federal Cooperative Agreements.

Abstract: 30 CFR Part 745 requires that states submit information when entering into a cooperative agreement with the Secretary of the Interior. OSMRE uses the information to make findings that the state has an approved program and will carry out the responsibilities mandated in SMCRA to regulate surface coal mining and reclamation programs.

Frequency: Semi-annually, Annually.

Description of Respondents: State cooperative agreement applications.

Annual Responses: 49.

Annual Burden Hours: 10,384.

Bureau Clearance Officer: David A. Collegeman, 343-5447.

Date: November 6, 1987.

P. William Green,

Acting Assistant Director, Budget and Administration.

[FR Doc. 87-26692 Filed 11-23-87; 8:45 am]
BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on the theme: "PVO Management Effectiveness". This is one of a series of meetings exploring various aspects of "PVO Effectiveness" delineating cases and strategies for enhancing PVOs' work as agents of development. The meeting will be one day: Thursday, December 3 from 9:00 a.m. to 5:00 p.m. in Room 110.7 NS. To enter the building, use C Street (Diplomatic Entrance) between 21st and 23rd Streets NW., Washington, DC.

The meeting is free and open to the public. However, notification by November 27, 1987 through Advisory Committee Headquarters is required by the Department of State for security reasons.

Theme: The Management Effectiveness of PVOs.

Objectives: To overview the current state of PVO management effectiveness.

To seek policy recommendations for A.I.D. which will enhance PVO management effectiveness.

Agenda

Thursday, December 3, 1987 9:00 a.m.—Welcoming Remarks: Randal Teague, ACVFA Chairman 9:10 a.m.—Opening Remarks: Thomas A. McKay, Deputy Assistant Administrator, FVA/PVC

9:20 a.m.—Outline of the Program: Nan Borton, Mark Ball

9:30 a.m.—"PVO Management Effectiveness"—L. David Brown, President, Institute for Development Research

10:20 a.m.—Coffee Break

10:30 a.m.—Panel Discussion: PVO Management Effectiveness, The Internal PVO Perspective

Ken Phillips, Executive Director, Foster Parents Plan

Joe Short, Independent Consultant

Joel Lamstein, John Snow Associates

12:00—Lunch

2:00 p.m.—Panel Discussion: PVO Management Effectiveness, An External (Donor) View

David Korten

A.I.D. Representative

John Gerhardt, Vice President

Ford Foundation

3:30 p.m.—Coffee Break

3:45 p.m.—Committee Discussion of Issues

There will be A.I.D. representatives at the meeting. Any interested person may attend, request to apper before, or file statements with the Advisory Committee. Written statements should be filed prior to the meeting and should be available in twenty-five (25) copies.

Persons wishing to attend the meeting must call (703) 235–3336, or write, not later than November 27 to arrange entrance to the Department of State Building. The address is: The Advisory Committee on Voluntary Foreign Aid, Room 250, SA–8, Agency for International Development, Washington, DC 20523.

Date: November 12, 1987.

Karen M. Poe,

Acting Deputy Assistant Administrator, Office of Private and Voluntary Cooperation, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 87–26986 Filed 11–23–87; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–3 (Sub-No. 65X)]

Missouri Pacific Railroad Co.; Abandonment Exemption in Omaha, NE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the Missouri Pacific Railroad Company of a 1.59-mile line of railroad between milepost 493.00 and milepost 494.59 in Omaha, Douglas County, NE, subject to standard employee protective conditions.[1]

DATES: This exemption is effective on December 24, 1987. Petitions to stay must be filed by December 9, 1987, and petitions for reconsideration must be filed by December 21, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–3 (Sub-No. 65X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services, (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: November 16, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–26995 Filed 11–23–87; 8:45 am]

BILLING CODE 7035–01–M

[1] The proposed abandonment was originally part of a broader abandonment proposal. However, this part of the proposal was segregated and comments were invited because the impact of the exemption was not readily apparent and it appeared that there was the potential for significant adverse effects. The comment period expired and the Commission has issued a decision on the merits of this part of the abandonment proposal.

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Allied-Signal et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 16th day of November 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Allied-Signal (C.C.A.W.)	Metropolis, IL	11/16/87	10/29/87	20,243	Uranium.
American Trim Co. (Workers)	Mckenney, VA	11/16/87	11/2/87	20,244	Buttons.
Beth-Energy Mine Corp. (UMWA)	Ebensburg, PA	11/16/87	10/26/87	20,245	Castings.
Bridgton Knitting Mill (workers)	Bridgton, ME	11/16/87	9/3/87	20,246	Knitting.
Carondolet Coke Corp. (OCAW)	St. Louis, MO	11/16/87	10/30/87	20,247	Steel.
Intermor Trade, Inc. (workers)	Houston, TX	11/16/87	10/30/87	20,248	Oil & gas.
Johnny Castleberry, Inc. (company)	Pearland, TX	11/16/87	10/26/87	20,249	Drilling equipment.
Lorraine Handbags, (workers)	E. Boston, MA	11/16/87	11/4/87	20,250	Handbags.
Maxi-Switch (workers)	Minneapolis, MN	11/16/87	10/5/87	20,251	Keyboards.
Prestolite Electric Inc. (U.A.W.)	Bay City, MI	11/16/87	11/6/87	20,252	Starting & pump motors.
Swift Independent/West By-Pass (workers)	Moultrie, GA	11/16/87	10/27/87	20,253	Meats.

[FR Doc. 87-27035 Filed 11-23-87; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-19,959]

Motion Control Industries, Inc., Ridgway, PA; Negative Determination Regarding Application for Reconsideration

By an application dated October 20, 1987, the International Union of Electrical workers (IUE) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Motion Control Industries, Inc., Ridgway, Pennsylvania. The denial notice was signed on September 18, 1987 and published in the **Federal Register** on September 30, 1987 (52 FR 36645).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that worker separations at Ridgway were the result of foreign imports. The union also claims that nothing has changed since the Department's earlier certification of workers at Motion Control; therefore, the workers should be certified.

Workers at Motion Control Industries, Inc., produce heavy duty brake linings.

The Department's denial of the union's petition filed on behalf of the approximately 30 workers laid off in July 1987 was based on the fact that the "contributed importantly" test of the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. A Department of Labor survey revealed that there were no respondents who increased their import purchases of heavy duty brake linings while they decrease their purchases from Motion Control in the first seven months of 1987 compared to the same period in 1986. For the earlier period from 1985 to 1986, the survey showed that customers who increased their import purchases of heavy duty brake linings while they decreased their purchases from Motion Control accounted for a negligible portion of the survey group's purchase reduction in 1986.

Further, the investigation findings show that the production of heavy duty brake linings increased in 1986 compared to 1985 and that Ridgway's production and company sales of heavy duty brakes increased in the first seven months of 1987 compared to the same period in 1986. Company officials attributed worker separations in July 1987 to the build up of inventories.

The Department's earlier certification of the Ridgway workers (TA-W-15,595) issued on February 22, 1985 is not controlling on the subject petition. In certifying workers for trade adustment assistance, each petition is judged on its own merits, the products produced and in the time frame for which it was filed. Findings in the earlier investigation showed that several major customers increased their imports of brake linings and decreased their purchases from Motion Control during the period applicable to the petition.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 17th Day of November 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-27033 Filed 11-23-87; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-19,918 and TA-W-20,059]

Precise Metals & Plastics, Inc., Cumberland, MD, and Milpark Drilling Fluids, Wharton, TX; Dismissal of Applications for Reconsideration

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Precise Metals & Plastics, Inc., Cumberland, Maryland; Milpark Drilling Fluids, Wharton, Texas. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissal of the applications were issued.

TA-W-19,918; Precise Metals & Plasters, Inc., Cumberland, Maryland (November 13, 1978)

TA-W-20,059; Milpark Drilling Fluids, Wharton, Texas (November 13, 1987)

Signed at Washington, DC, this 17th day of November 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-27034 Filed 11-23-87; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-18-M]

Homestake Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.19022 (initial measurement)

to its Homestake Gold Mine (I.D. No. 39-00055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that after initial rope stretch but before visible wear occurs, the rope diameter of newly installed wire ropes be measured at least once in every third interval of active length and the measurements averaged to establish a baseline for subsequent measurements.

2. In a separate petition for modification, (M-87-17-M), petitioner proposes to use Phillystran (an Aramid fiber) in lieu of wire ropes.

3. Due to the fact that the material proposed to be used will be an aramid fiber versus wire, there will be no stretching. For this reason, petitioner maintains that the proposal alternate method will provide the same degree of safety to the miners affected as that afforded by the standard.

4. For these reason, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 24, 1987. Copies of the petition are available for inspection at that addresses.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: November 10, 1987.

[FR Doc. 87-27036 Filed 11-23-87; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

[V-84-4]

Application for an Extension of Temporary Variance; Sanders Lead Co., Inc.

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Withdrawal of application for an extension of temporary variance.

SUMMARY: In the August 14, 1987 Federal Register notice (52 FR 30468) OSHA announced that a hearing will be held on the application of Sanders Lead Company, Inc. for an extension of its temporary variance from the final medical removal trigger under the standard for Occupational Exposure to Lead (29 CFR 1910.1025(k)(1)(i)(D)). On October 16, 1987, the company filed a motion with the Office of the Administrative Law Judges to withdraw the application for variance. On October 26, 1987, Quentin P. McColgin (Administrative Law Judge) issued an order of dismissal of the proceeding. This notice cancels the hearing scheduled for Sanders Lead Company, Inc. on January 12, 1988, Montogmery, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. James L. Concannon, Office of Variance Determinations, Telephone (202) 523-7193.

Signed at Washington, DC, this 16th day of November 1987.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87-27032 Filed 11-23-87; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Standard Format and Content for Emergency Plans for Fuel-Cycle and Materials Licensees; Draft Report for Comment

The Nuclear Regulatory Commission has published in draft form a Standard Format and Content for Emergency Plans for Fuel-Cycle and Materials Licensees (NUREG-0762, Rev. 1) for comment. The document conforms with a final rule on emergency plans for these licensees that is to be issued in 1988.

A free single copy of draft NUREG-0762, Rev. 1, may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, Attention: Distribution Section, Room P-130A, Washington, DC 20555. A copy is also available for inspection, copying, or both in the NRC Public Document Room, 1717 H Street NW., Washington, DC.

Dated at Silver Spring, MD, this 17th day of November, 1987.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Operations Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 87-27037 Filed 11-23-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL-1 and 50-444-OL-1]

Public Service Co. of New Hampshire, et al., (Seabrook Station, Unit 1 and 2); On-Site Emergency Planning and Safety Issues; Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of November 13, 1987, oral argument on the pending appeal of intervenors Town of Hampton, New England Coalition of Nuclear Pollution, and Seacoast Anti-Pollution League from the Licensing Board's August 20, 1987 memorandum and order (unpublished) will be heard at 10:00 a.m. on Tuesday, December 8, 1987, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

Dated: November 18, 1987.

[FR Doc. 87-27018 Filed 11-23-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 653-9404.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on October 27, 1987 (52 FR 41375). Individual authorities established or revoked under Schedule A, B, or C between October 1, 1987, and October 31, 1987, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exceptions were established.

Securities and Exchange Commission

Up to 10 positions of accountant, GS–12/13, when filled by persons selected as SEC Accounting Fellows for the Full Disclosure Program. Employment under this authority may not exceed 2 years. Effective October 14, 1987.

National Endowment for the Arts

One position of Assistant Director of the Challenge and Advancement Grant Programs, GM–1056–14. Effective October 21, 1987.

Department of Defense

Defense Systems Management College, Fort Belvoir, Virginia. The Provost and Professors in grades GS–13 through 15. Effective October 30, 1987.

The following exception has been revoked:

Department of the Army

Defense Systems Management School, Fort Belvoir, Virginia. The Deputy Commandant and Professors in grades GS–13 through 15. This authority is now under Department of Defense. Effective October 30, 1987.

Schedule B

No Schedule B exceptions were established or revoked during October.

Schedule C

Department of Agriculture

One Confidential Assistant to the Chief for Soil Conservation Service. Effective October 20, 1987.

One Private Secretary to the Assistant Secretary for Economics. Effective October 26, 1987.

Department of Commerce

One Director, Congressional Affairs to the Under Secretary for Economic Affairs. Effective October 1, 1987.

One Confidential Assistant to the Deputy Assistant Secretary for Services. Effective October 6, 1987.

One Private Secretary to the Assistant Secretary for Trade Development. Effective October 23, 1987.

One Confidential Assistant to the Deputy Assistant Secretary for Export Administration. Effective October 26, 1987.

One Congressional Liaison Assistant to the Assistant Secretary for Congressional Affairs. Effective October 28, 1987.

Department of Education

One Confidential Assistant to the Assistant Secretary for Civil Rights. Effective October 5, 1987.

One Confidential Assistant to the Executive Assistant for Elementary and Secondary Education. Effective October 16, 1987.

One Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective October 20, 1987.

One Special Assistant to the Deputy Under Secretary for Management. Effective October 26, 1987.

Department of Energy

One Confidential Assistant (Secretary) to the Administrator for Energy Information Administration. Effective October 5, 1987.

Department of Housing and Urban Development

One Confidential Assistant to the Under Secretary. Effective October 7, 1987.

One Executive Assistant to the Deputy Under Secretary for Field Coordination. Effective October 20, 1987.

One Assistant to the Deputy Assistant Secretary for Congressional Relations. Effective October 26, 1987.

Department of Interior

One Confidential Assistant to the Chief Operating Officer. Effective October 28, 1987.

Department of Justice

One Special Assistant to the Attorney General. Effective October 2, 1987.

One Staff Assistant (Speechwriter) to the Director for Office of Public Affairs. Effective October 7, 1987.

One Special Assistant to the Director for Bureau of Justice Assistance. Effective October 14, 1987.

One Associate Deputy Attorney General to the Deputy Attorney General. Effective October 20, 1987.

One Confidential Assistant to the Deputy Director for Bureau of Justice Assistance. Effective October 20, 1987.

One Confidential Assistant to the Director for Asylum Policy and Review. Effective October 20, 1987.

Department of Labor

One Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective October 5, 1987.

One Special Assistant to the Deputy Assistant Secretary for Mine Safety and Health. Effective October 20, 1987.

Department of Transportation

One Congressional Liaison Officer to the Director for Office of Congressional Affairs. Effective October 6, 1987.

Department of Treasury

One Senior Legislative Manager to the Deputy Assistant Secretary, Legislative Affairs. Effective October 20, 1987.

Federal Deposit Insurance Corporation

One General Counsel to the Chairman. Effective October 5, 1987.

Federal Home Loan Bank Board

One Secretary to the Board Member. Effective October 5, 1987.

One Assistant to the Board Member. Effective October 20, 1987.

Federal Mediation and Conciliation Service

One Executive Assistant to the Director. Effective October 9, 1987.

General Services Administration

One Confidential Assistant to the Associate Administrator for Congressional Affairs. Effective October 14, 1987.

International Trade Commission

One Staff Assistant (Legal) to the Chairman. Effective October 7, 1987.

Office of Personnel Management

One Confidential Assistant to the Director of Executive Administration. Effective October 2, 1987.

Small Business Administration

One Special Assistant to the Associate Administrator for Minority Small Business and Capital Ownership Development. Effective October 5, 1987.

Securities and Exchange Commission

One Confidential Assistant to the Chairman. Effective October 13, 1987.

United States Information Agency

One Special Assistant to the Director. Effective October 14, 1987.

One Staff Assistant to the Special Assistant to the Director. Effective October 14, 1987.

One Staff Assistant to the Director. Effective October 14, 1987.

United States Trade Representative

One Public Affairs Specialist to the Assistant United States Trade Representative. Effective October 26, 1987.

U.S. Office of Personnel Management.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

James E. Colvard,

Deputy Director.

[FR Doc. 87–26980 Filed 11–23–87; 8:45 am]

BILLING CODE 6325–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, December 8 and 9, 1987, at the Hyatt Regency Crystal City at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in Washington Room A, on the second concourse, at 8:30 a.m., December 8, 1987. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9:00 a.m. in Washington Room B, also on the second concourse, on December 8, 1987.

The full Commission will meet at 1:30 p.m. in Washington Rooms A and B, on the second concourse, December 8, 1987, and in Regency Room F on December 9, 1987, convening at 9:00 a.m.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 87-26991 Filed 11-23-87; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

November 18, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Forest City Enterprises Inc.
Class A Common Stock, $.33⅓ Par Value (File No. 7-0707)
Forest City Enterprises Inc.
Class B Common Stock, $.33⅓ Par Value (File No. 7-0708)
Georgia Gulf Corp.
Common Stock, $.05 Par Value (File No. 7-0709)
Par Technology Corp.
Common Stock, $.02 Par Value (File No. 7-0710)
British Petroleum Company PLC
Installment Payment American Depositary (File No. 7-0711)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 10, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-26998 Filed 11-23-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7789]

Issuer Delisting; Application To Withdraw From Listing and Registration; Foothill Group, Inc. (The) (Class A Common Stock, No Par Value)

November 18, 1987.

The Foothill Group, Inc. ("Company") has filed an application with the Securities and Exchange Commisison pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's common stock recently began trading on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in such dual listing and believes that such dual listing would fragment the market for its common stock.

Any interested person may, on or before December 10, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-26999 Filed 11-23-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before December 24, 1987. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-S538

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340

Title: Counselor Case Report

Form No.: SBA 641A

Frequency: On occasion

Description of Respondents: The information is collected from the client. This information is used to

plan, monitor and control Agency programs of management counseling
Annual Responses: 900,000
Annual Burden Hours: 90,000

Title: Small Business Development Center Certification of Cash Match
Form No.: SBA 1449
Frequency: Annually
Description of Respondents: The Small Business Administration requires this information to demonstrate that each Small Business Development Center is providing the cash match required by Pub. L. 98-395
Annual Responses: 49
Annual Burden Hours: 36.75

Title: Request for Counseling
Form No.: SBA 641
Frequency: On occasion
Description of Respondents: This form is used by individuals interested in obtaining management counseling from the SBA
Annual Responses: 450,000
Annual Burden Hours: 54,000

Title: Supplemental Guaranty Agreement—Preferred Lenders Program
Form No.: SBA 1347
Frequency: Bienally
Description of Respondents: This form is the contract which describes the rights and responsibilities of a participating lender and SBA under the Preferred Lenders Program
Annual Responses: 200
Annual Burden Hours: 300

William Cline,
Chief, Administrative Information Branch.
[FR Doc. 87-26957 Filed 11-23-87; 8:45 am]
BILLING CODE 8025-01-M

[Application No. 02/02-0511]

Application for License To Operate as a Small Business Investment Company (SBIC); Bridger Capital Corp.

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (§ 107.102 (1987)) by Bridger Capital Corporation, 645 Madison Avenue, New York, New York 10022, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, (the Act), as amended, (15 U.S.C. *et. seq.*)

The proposed officers, directors and shareholders are:

Name	Title	Percentage of ownership
Seymour L. Wane, 645 Madison Avenue, New York, New York 10022.	President	0
Robert W. Lenthe, 645 Madison Avenue, New York, New York 10022.	Vice-President	0
Herbert M. Friedman, 460 Park Avenue, New York, New York 10022.	Director	0
Louis Marx, Jr., 645 Madison Avenue, New York, New York 10022.	Shareholder	100

The Applicant will begin operations with a capitalization of $2,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Date: November 16, 1987.

[FR Doc. 87-26959 Filed 11-23-87; 8:45 am]
BILLING CODE 8025-01-M

[License No. 06/03-5168]

Surrender of License; Worthen Finance and Investment, Inc.

Notice is hereby given that Worthen Finance and Investment, Inc., 200 West Capitol Avenue, Little Rock, Arkansas 72201 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Worthen Finance and Investment, Inc. was licensed by the Small Business Administration on October 31, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on October 30, 1987, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: November 13, 1987.

[FR Doc. 87-26958 Filed 11-23-87; 8:45 am]
BILLING CODE 8025-01-M

Region IV Advisory Council, Alabama Regional Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council located in the geographical area of Birmingham, Alabama, will hold a public meeting 9:00 a.m.-12:00 Noon, on Friday, December 11, 1987, in the Birmingham District Office of U.S. Small Business Administration, 2121 8th Avenue, North, Suite 200, Birmingham, Alabama 35203, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, above address, (205)731-1341.

Jean M. Nowak,
Director, Office of Advisory Councils.
November 16, 1987.

[FR Doc. 87-26956 Filed 11-23-87; 8:45 am]
BILLING CODE 8025-01-M

Region VI Advisory Council Public Meeting; Louisiana

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of New Orleans, will hold a public meeting at 10:00 a.m. on Friday, December 4, 1987, at the Small Business Administration office, 1661 Canal Street, Suite 2000, New Orleans, Louisiana 70112-2890 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert J. Crochet, District Director, U.S. Small Business Administration, 1661 Canal Street, Suite 2000, New Orleans, Louisiana 70112-2890, or (504) 589-2744.

Jean M. Nowak,
Director, Office of Advisory Councils.
November 16, 1987.

[FR Doc. 87-26953 Filed 11-23-87; 8:45 am]
BILLING CODE 8025-01-M

Region VII Advisory Council Public Meeting; Missouri

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Kansas City, will hold a public meeting at 9 a.m., Wednesday, December 9, 1987, at the Commerce Bank Building, at 1000 Walnut Street, 18th Floor, Kansas City, Missouri 64106 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John Scott, Deputy District Director, U.S. Small Business Administration, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106, (816) 374–5557.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 16, 1987.

[FR Doc. 87–26952 Filed 11–23–87; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council Public Meeting; Ohio

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Cleveland, Ohio, will hold a public meeting at 10:00 a.m. on Friday, December 11, 1987, at the Cuyahoga Community College, Business and Administration Building, Room 210, Cleveland, Ohio, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles Hemming, District Director, U.S. Small Business Administration, 1240 E. Ninth Street, Room 317, Cleveland, Ohio, (216) 522–4181.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 16, 1987.

[FR Doc. 87–26955 Filed 11–23–87; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council Public Meeting; West Virginia

The Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, West Virignia, will hold a public meeting beginning Thursday, December 3, 1987, at 1:00 p.m. and ending on Friday, December 4, 1987, at 12:00 Noon at Concord College located in Athens, WV to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Thomas Humphreys, Acting District Director, U.S. Small Business Administration, P.O. Box 1608, Clarksburg, WV 26302–1608 or phone (304) 623–5631.

Jean M. Nowak,

Director, Office of Advisory Council.

November 16, 1987.

[FR Doc. 87–26954 Filed 11–23–87; 8:45 am]

BILLING CODE 8025–01–M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, DC, will meet on Wednesday, December 2, 1987, at 2:00 p.m. until 4:00 p.m., at the Fairmont Hotel, 123 Baronne Street, New Orleans, Louisiana.

At the hearing, private sector executives, local officials, trade associations, small and minority business entrepreneurs, will present testimony regarding the challenges they face in the development of their businesses, along with proposed solutions to these problems for possible implementation by the Federal Government.

Persons wishing to obtain further information should contact Milton Wilson, Jr., Office of Minority Small Business Outreach, U.S. Small Business Administration, 1441 L Street NW., Room 602, Washington, DC 20416, telephone (202) 653–6526.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 15, 1987.

[FR Doc. 87–27040 Filed 11–23–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular; Public Debt Series No. 34–87]

Treasury Notes of February 15, 1993; Series J–1993

November 18, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,500,000,000 of United States securities, designated Treasury Notes of February 15, 1993, Series J–1993 (CUSIP No. 912827 VQ 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated December 1, 1987, and will accrue interest from that date, payable on a semiannual basis on August 15, 1988, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1993, and will not be subject to call redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public moneys. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches

and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard Time, Tuesday, November 24, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 23, 1987, and received no later than Tuesday, December 1, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadlines for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5, must be made or completed on or before Tuesday, December 1, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, November 27, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, December 1, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of

holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-27063 Filed 11-20-87; 10:04 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 226
Tuesday, November 24, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 30, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Preliminary consideration of testimony on banking issues. (This item was originally announced for a closed meeting on November 12, 1987.)
2. Proposed purchase of computer equipment within the Federal Reserve System.
3. Proposed procurement of currency processing equipment with the Federal Reserve System.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 20, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–27148 Filed 11–20–87; 2:38 pm]

BILLING CODE 6210-01-M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:30 p.m., November 30, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) The General administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific items include: (1) Proposed early retirement program for employees of a Federal Reserve Bank; (2) supplemental pension for Federal Reserve Bank retirees; and (3) amendment to the Thrift Plan regarding contributions.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 20, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–27144 Filed 11–20–87; 2:06 pm]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 10:00 a.m., Monday, November 23, 1987.

PLACE: Board Room (Room 812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Recommendation to WMATA/CSX re Common Corridor Operations Along the Red Line (B-Section).

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

November 19, 1987.

[FR Doc. 87–27153 Filed 11–20–87; 3:36 pm]

BILLING CODE 7533-01-M

federal register

Tuesday
November 24, 1987

Part II

Environmental Protection Agency

State Implementation Plans; Approval of Post-1987 Ozone and Carbon Monoxide Plan Revisions for Areas Not Attaining the National Ambient Air Quality Standards; Notice

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL 3256-7]

State Implementation Plans; Approval of Post-1987 Ozone and Carbon Monoxide Plan Revisions for Areas Not Attaining the National Ambient Air Quality Standards; Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Policy.

SUMMARY: The EPA is developing a program to address the likelihood that many areas in the country will not attain the national ambient air quality standards (NAAQS) for ozone and carbon monoxide (CO) by December 31, 1987, the latest date for attainment expressly identified in the Clean Air Act (the Act), 42 U.S.C. 7401 et seq. This notice describes EPA's proposed views about how EPA should interpret the Act so as to bring those areas into attainment, the reasons for that interpretation, and the concrete steps EPA intends to take to implement that interpretation soon and in the long term. The EPA solicits comment on all aspects of this notice, and intends to issue its final policy on these issues after responding to public comment. That final policy will be an advance notice of how EPA intends, in subsequent rulemakings, to judge the adequacy of State efforts to plan for attainment of the ozone and CO standards.

DATE: The EPA will consider comments received by January 25, 1988.

ADDRESSES: A docket [Docket (A–87–18)] containing material relevant to this action is located at: Central Docket Section, South Conference Center, Room 4, U.S. EPA, 401 M Street SW., Washington, DC 20460.

Interested persons may inspect the docket between 8:00 a.m. and 4:00 p.m. on weekdays. The EPA may charge a reasonable fee for copying. The EPA will maintain a duplicate copy of the docket in each EPA Regional Office.

All written comments should be submitted (in duplicate if possible) to: Central Docket Section (A–87–18), Docket No. A–87–18, U.S. EPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Brock Nicholson, Office of Air Quality Planning and Standards (MD–15), Research Triangle Park, North Carolina 27711, (919) 541–5517 or (FTS) 629–5517.

SUPPLEMENTARY INFORMATION:

Table of Comments

Summary of Proposed Policy

For the convenience of the reader, this notice first sets forth a summary of the background and the key features of the policy proposed today. More detailed discussions of the statutory and regulatory background, EPA's proposed interpretation of the Act's requirements for post-1987 correction of air quality plans, and issues raised by the proposed policy appear later in this notice.

Following those discussions, EPA sets forth a "Policy Statement" that is intended as a complete statement of the policy requirements. The reader will notice that this organization creates some redundancy. On balance, however, EPA believes that the publication of a proposed Policy Statement will give the reader the best indication of the actual policy that will apply upon final publication.

Summary of Background

Over the past year, EPA has been considering how it should deal under the Act with the likely persistence in many urban areas of violations of the NAAQS for ozone and CO beyond December 31, 1987, the latest date for attainment explicitly mentioned in the Act. Since 1970, these areas have gone through several rounds of planning for attainment of these standards, first under the 1970 Clean Air Act and then under the 1977 Amendments to the Act. Each round has spawned new State implementation plans (SIP's) that in turn have produced significant progress toward controlling the emissions of pollutants that cause violations of the standards. Despite this progress, however, it is apparent that the existing SIP's for many areas need to be tightened further, in some cases substantially, to produce attainment.

The EPA historically has interpreted the Act to set requirements for States to produce plans persuasively projecting attainment of the standards by the statutory dates—not a requirement that areas actually attain the standards by those dates. See, e.g., 40 CFR 52.24 (1984) and 48 FR 50686 (November 2, 1983) explaining and codifying this interpretation in the context of the failure of several areas to attain the standards by December 31, 1982, the applicable planning date for certain areas under section 172 of the Act, 42 U.S.C. 7502. The EPA intends to retain this interpretation of the Act for all areas that are still violating the ozone or CO standard after December 31, 1987. This means that EPA does not intend to impose any of the construction bans or funding restrictions provided by the Act in reaction to an area's failure to attain the standards by that or any other date. Rather, EPA intends to require a new round of planning extending beyond 1987 for areas whose existing plans will not bring about attainment in the near term and, as in the past, to reserve sanctions for cases in which States fail to submit adequate plans or to

implement their existing plans in accordance with required schedules. See 52 FR 26404 (July 14, 1987) ("General Preamble" explaining EPA's recent proposals to impose the Act's construction bans in areas that did not submit adequate plans in response to past planning requirements).

The Act does not provide explicit direction as to what these post-1987 plans must contain. In particular, the Act contains some ambiguity as to the attainment dates that apply once the 1987 date passes, which sanctions are available in different types of areas, and how much interim progress toward attainment the new plans must produce. The EPA believes, however, that the Act provides guidance on how EPA should resolve these ambiguities. For that reason, EPA intends to issue a detailed policy to guide State and local planners in a new round of planning and, shortly thereafter, to trigger that planning process.

The EPA has structured this proposed policy so that it is consistent with EPA's best view of what the current law requires in these circumstances. Some of the elements of the policy that appear required by the law, however, do not reflect what EPA would prefer as a matter of policy.

While EPA believes that it can effectively implement the proposed policy under the current statute, EPA believes that certain changes to the Act might be helpful. The EPA believes that a narrow revision of the current statute, when combined with the remainder of today's proposal, would provide a satisfactory blueprint for addressing persistent nonattainment of the ozone and CO standards after 1987. For example, EPA would prefer that the statute create new attainment dates that vary by area according to the difficulty of attaining, and that the construction moratorium provided in section 110(a)(2)(I) of the Act not be mandatory, as described below, in areas that cannot submit SIP's that demonstrate attainment of the standards in the near term after 1987.

In addition, it appears that the history of the air quality planning in an area may determine the availability of certain sanctions [such as the highway funding sanction in section 176(a)] in the area. The disparate applicability of sanctions from area to area could create the perception that EPA is applying the sanctions inequitably. Congress may want to examine whether to adjust the sanctions provisions to avoid any apparent (or substantive) inequity. Some of the other changes that would be desirable [e.g., changes to sections 110(c) and 176(b)] will become evident as the reader proceeds through today's policy proposal.

Summary of Policy—General Approach and Key Features

The EPA will trigger the new round of planning by issuing notices that the SIP's for the affected areas are "substantially inadequate" within the meaning of section 110(a)(2)(H) of the Act, 42 U.S.C. 7410(a)(2)(H). The EPA expects to issue such SIP calls in the spring of 1988.[1] SIP calls will be based on the most recently available air quality date (i.e., through 1987). To provide an indication of which areas might be included in the SIP calls, lists of areas that would be subject to SIP calls based on existing air quality data (through 1986) appear in Appendix A at the end of today's notice.

The SIP calls will apply to areas falling into various categories. The SIP's for some of the areas may once have received EPA's full approval under Part D of the Act. For certain other areas, the most recent SIP's never received EPA approval and do not contain a persuasive demonstration of attainment of the standards in the near term. In such cases, EPA's disapproval of such SIP's will reaffirm the SIP calls for those areas and, as discussed later in this notice, have other potential consequences.

The SIP's for some areas received EPA's approval on the condition that the State remedy certain plan deficiencies. Where the State has not corrected these problems, EPA may rescind its approval of the plan and substitute a disapproval. Such disapprovals would reaffirm the SIP call and, as discussed later in this notice, have other potential consequences.

Some areas have already received SIP calls from EPA and have submitted SIP revisions in response to the calls. Final disapproval of the pending submittal for such an area will trigger the new planning requirements.

In all cases a SIP call based on NAAQS violations issued prior to a final disapproval as discussed above will trigger the need for a SIP revision.

Finally, EPA intends to require new planning even in some areas that were not required to submit plans under the 1977 Amendments. These are areas that have recently detected violations of the standards or appear to be contributing to nonattainment problems in nearby areas.

[1] Those nonattaining areas whose pending SIP disapprovals are not yet final by the time EPA issues SIP calls will still receive a SIP call that triggers new plan requirements.

The EPA proposes to require that the affected areas develop and submit new plans that include a persuasive demonstration that they will attain the standards by a fixed date. For the reasons described in the "General Preamble" that EPA published on July 14, 1987 (52 FR 26404), EPA believes that a plan that commits to periodic SIP tightenings as measures become reasonably available, but that does not actually demonstrate attainment by any particular date, will not meet the Act's planning requirements. Stated simply, EPA believes that the Act requires States to develop in advance their plans for attainment. This does not allow States to wait and see what types of pollution control become reasonably available or until better air quality tools become available.

The EPA believes it must apply the relevant construction moratorium (or leave in place the currently applicable moratorium) in areas whose new plans (post-1987) do not contain a persuasive demonstration that their new pollution control strategies will produce attainment of the standards in the near term after 1987 (within 3 years and, for some areas, 5 years of EPA's approval of the area's post-1987 plan revision). The EPA will not, however, supplement the construction moratorium with the available funding restrictions in any area whose plan, though not showing attainment in the near term, does reflect reasonable efforts to submit an acceptable plan. To reflect such efforts, the plan would have to show, at a minimum, that the new control strategy would produce attainment by a date that, although perhaps later than the near-term period just described, is expeditious in light of the difficulty in meeting the area's pollution control requirements under the air quality standards. Moreover, all except the most marginal nonattainment areas will also have to show that their new plans will produce expeditious progress in the interim before attainment. This "reasonable rate of progress would be an average annual emissions reduction of at least 3 percent (beyond certain baseline measures) in the base year inventory for the area.

Beyond applying sanctions to address planning failures, EPA intends to review the extent to which States are carrying out their existing SIP's. Where a State is not carrying out its existing SIP, EPA may initiate rulemaking to impose sanctions such as a construction moratorium to achieve implementation.

The EPA intends to promulgate some national regulations that will assist the States in the new planning effort, and to

prescribe some minimum pollution control requirements that the new SIP's must contain. However, EPA will allow State and local planners sufficient flexibility to choose among control options. This is especially appropriate for planning to attain the ozone and CO standards, because State and local planners and officials are generally best suited to select and implement controls of emissions from in-use vehicles. See, e.g., H.R. Rep. No. 95–294, 95th Cong., 1st Sess., 288 (1977).

Beyond setting the framework for the creation of new control strategies, EPA intends to require that the new plans include provisions to maximize the effectiveness of the control programs established under previous EPA policies. In addition, EPA will establish rigorous new requirements for assuring actual achievement of the progress that these plans project for the future, and for making mid-course corrections to the new SIP's if they prove less effective than projected.

It is important to note that this proposed policy (and any policy that ensures ultimate attainment of the CO and ozone NAAQS as required by the Act) would entail substantial cost. As a rought estimate, based on potential variations in average control costs and extrapolation of growth in both stationary and mobile sources of emissions, EPA projects annual costs in 1992 would be 2.6–4.3 billion dollars. These would increase up to 6 to 10 billion dollars annually after 2002.

This is an estimate of direct control costs only; it does not include potentially substantial social costs associated with extensive carpooling, inconvenience associated with reformulated consumer products, job disruption associated with relocation of major volatile organic compounds sources such as refineries, etc.

While these direct control costs are high, the policy proposed in this notice tends to minimize aggregate control costs for two reasons: (1) It reserves to States decision-making on specific controls so that such decisions can reflect what is most efficient in a given locality; and (2) it recognizes that areas with differing air quality problems require different amounts of time to comply, thus giving areas with long-term problems an opportunity to develop over-all strategies that minimize social disruption and cost. Policies that lack these features would tend to increase costs beyond that noted above.

Detailed Statutory and Regulatory Background

Detailed descriptions of the Act and EPA's implementation of the Act appear in a series of **Federal Register** notices that EPA has published over the years—most recently, at 52 FR 26404 (July 14, 1987). See also, 44 FR 20372 (April 4, 1979); 46 FR 7182 (January 22, 1981); and 48 FR 50686 (November 2, 1983). Those notices provide important background for today's policy proposal. A synthesis of those descriptions is set forth below.

The Clean Air Act

In 1970, Congress amended the Act to establish a joint State and Federal program to control air pollution. As required by the new sections 109 and 110, EPA established NAAQS for such pollutants as photochemical oxidants (currently measured as ozone and therefore referred to hereinafter as ozone) and CO, and called for States to submit SIP's providing for attainment of those standards within certain prescribed periods. Section 110(a)(2) specifies the requirements for these SIP's. It directs EPA to approve a SIP within 4 months after its submission if, among other things, it "provides for the attainment" of the standard "* * * as expeditiously as practicable but [subject to subsection (e)] in no case later than 3 years from the date of approval of such plan * * *." Each SIP must also provide, according to section 110(a)(2)(H), that the State revise its SIP whenever the Administrator finds that the existing SIP is "substantially inadequate" to achieve the NAAQS or otherwise meet the requirements of the Act.

Section 110(e) permits an extension of the 3-year attainment period for an additional 2 years if the technology to attain within 3 years is not available and the State has applied "reasonably available alternative means" of attaining the standard in the interim. Section 110(c) directs EPA, in the event it disapproves a submission or a State fails to submit a plan, to promulgate its own measures to fill the gap. Finally, under section 110(a)(3), a State may revise its plan at any time, but EPA may approve the change only if the SIP will continue to conform to the attainment and maintenance requirements of the Act.

In many areas of the country, the original SIP's that EPA approved or promulgated in the early 1970's failed to bring about attainment of the ozone and CO standards within the statutory periods. When Congress amended the Act in 1977, it created a new Part D, a planning process to revise the SIP's for areas that were exceeding the standards. Section 107(d) required EPA, by roughly March 1978, to identify those areas that in August 1977 were still experiencing NAAQS violations. The States were required by January 1, 1979, to adopt and submit such revisions to the SIP's for those areas that would meet the requirements of Part D and the new section 110(a)(2)(I).

Under Part D, each revision was to provide for attainment of the relevant primary NAAQS as expeditiously as practicable, but in general no later than December 31, 1982. A revision could provide for attainment of the primary standards for ozone and CO as late as December 31, 1987, if the State demonstrated that attainment by the 1982 deadline was not possible despite the implementation of all reasonably available control measures (RACM).

In any event, each revision due in 1979 was to provide for the implementation of RACM and for "reasonable further progress" (RFP)—defined as annual incremental reductions in emissions sufficient in EPA's judgment to provide for attainment by the applicable deadline, including such reductions as may be obtained through the adoption of "reasonably available control technology." Each revision also was to have, among other things, a permit program for the preconstruction review of major new sources of the relevant pollutants. As outlined by section 173 of the Act, this program would allow construction, even before attainment occurs, upon determinations that (1) the source would have state-of-the-art controls, (2) its emissions would be offset by greater than one-for-one reductions elsewhere or would be accounted for in an approved demonstration of attainment by the applicable date for the area in which the source was locating, (3) the applicant's other sources in the State are in compliance with the SIP, and (4) the State is carrying out the SIP. In the case of the areas with 1987 deadlines (i.e., "extension" areas), each revision due in 1979 had to identify any measures beyond RACM that would be necessary to assure timely attainment and had to contain commitments to adopt a motor vehicle inspection and maintenance program. In addition, each State with an extension area was to submit a supplemental revision before July 1, 1982, containing those additional measures necessary to assure attainment by the end of 1987.

As part of the 1977 Amendments, section 110(a)(2)(I) required each SIP to contain a construction ban that would operate against major new sources and major modifications of existing sources of the relevant pollutants in each nonattainment area after June 30, 1979, "* * * unless, as of the time of

application for a permit for such construction * * *, such plan meets the requirements of Part D * * *." As further incentive for timely submission of Part D SIP revisions, Congress added sections 176(a) and 316(b). Section 176(a) bars the Department of Transportation from funding many highway projects, and EPA from making air program grants in an ozone or CO nonattainment area upon a determination by EPA that the State has failed to make reasonable efforts to submit approvable SIP revisions for the area in accordance with Part D. Section 316(b) authorizes EPA to withhold certain grants for sewage treatment construction where an area has failed, among other things, to submit an adequate Part D SIP for the area.

Congress also added two funding sanctions for failures to implement a SIP. First, it extended the discretionary withholding of sewage treatment grants under section 316 to such failures. Second, it provided in section 176(b) for a withholding of air grants for any area in which the State is not implementing the applicable SIP. Beyond those funding sanctions, the requirement in section 173(4) operates, in effect, as a ban on the construction of major new sources and major modifications of existing sources in the event that a State is not "carrying out" its SIP. This means that, even when the SIP for a designated nonattainment area has been approved and is adequate, the area may become subject to a construction ban if it fails to carry out the SIP. (See discussion on Plan Implementation under section 6.c. Promulgation of Federal Plans.)

History of Regulatory Development Under Part D

The EPA began its administration of Part D with the promulgation in 1978 of attainment status designations under section 107(d). See, e.g., 43 FR 8962 (March 3, 1978); 43 FR 40502 (September 12, 1978). Then, on April 4, 1979, EPA published a notice describing in detail the prerequisites to EPA approval of the SIP revisions that Part D required the States to submit in 1979 for areas that were designated nonattainment (44 FR 20372).

On July 2, 1979, EPA issued an interpretative rule establishing that the construction ban in section 110(a)(2)(I) would begin to operate immediately in any designated nonattainment area that was not yet covered by an approved Part D SIP (44 FR 38471 [now codified at 40 CFR 52.24(a) (1986)]). At the time, EPA had yet to approve a Part D SIP for any ozone or CO nonattainment area, so the ban came into effect in all of them. Gradually, the States submitted for most of these areas the first round of Part D SIP revisions that were due at the beginning of 1979, and EPA approved or conditionally approved these revisions. Thus, by the end of 1982, most ozone and CO nonattainment areas were free of the ban.

After December 31, 1982, however, EPA faced the dilemma of whether to reimpose the ban in those numerous nonextension areas where it appeared that violations of the ozone and CO NAAQS would persist despite the States' implementation of their approved 1979 plans. The EPA initially proposed to disapprove the SIP's for those areas and impose the ban, on the theory that a SIP that had failed to produce attainment by the end of 1982 could not be said to "provide for" attainment by then, as required by Part D. See 48 FR 4972 (February 3, 1983). In response to almost universal opposition from commenters, EPA reconsidered its position and, in late 1983, reversed itself. See 48 FR 50686 (November 2, 1983). The EPA took the position that Part D presents only obligations to plan and implement the plan, not to attain. The EPA concluded that Congress expected Part D SIP's to provide for attainment by the end of 1982 only "in a prospective or planning sense." Id. at 50690–91. The EPA put this conclusion into regulatory form by adding the following sentence to the 1979 interpretative rule embodying the ban [i.e., 40 CFR 52.24(a)]: "This section shall not apply to any nonattainment area once EPA has fully approved the State implementation plan for the area as meeting the requirements of Part D."

With respect to remedying the nonattainment problem, EPA stated:

> Where a fully approved Part D plan failed to bring about attainment by the end of 1982, EPA will treat the plan as "substantially inadequate" to assure attainment under Section 110(a)(2)(H) and call for a SIP revision. EPA will provide one year for the submittal of the new revision under Section 110(c)(1)(C). The revisions will have to provide for attainment as expeditiously as practicable * * *. [Id. at 50693 col. 1.]

The EPA warned that, if a State failed to respond adequately to a call for a SIP revision, it would impose a ban on construction for failure to implement the SIP. Id. at 50693 col. 2. This failure would be premised on the SIP provision created under section 110(a)(2)(H) requiring the State to revise its SIP upon a call from EPA. The new source review provisions of Part D, specifically section 173(4), bar the issuance of permits to major new sources of the relevant pollutant locating in the nonattainment area, if the State is failing to carry out the SIP. See 40 CFR 52.24(b) (1986). By requiring the new plans to show attainment "as expeditiously as practicable" rather than by a fixed date analogous to the Part D dates, and by restricting itself to using the section 173(4) sanctions rather than the full array of Part D sanctions to address State failures to respond to the SIP calls, EPA implicitly acknowledged that it viewed the Part D planning requirements as only one-time obligations, i.e., not renewable by the SIP calls.

The EPA further advised that any nonextension area still lacking a fully approved plan would continue to be potentially subject to the ban in section 110(a)(2)(I). For example, EPA stated that areas with conditionally approved Part D SIP's that had failed to meet important conditions were potentially subject to a rescission of the conditional approval and imposition of the section 110(a)(2)(I) construction ban. But EPA advised that, in view of the passage of the 1982 deadline, a corrective SIP meeting those conditions could still obtain full approval and avoid the ban after 1982 if the SIP provided for attainment as expeditiously as practicable.

The EPA subsequently issued calls for revisions of the ozone and CO SIP's for many nonextension areas with previously approved plans. As a result, EPA has received revisions from many States over the past few years. The EPA recently proposed to disapprove two of those revisions. See 52 FR 26421 (July 14, 1987) (Dallas, TX) and 52 FR 26435 (July 14, 1987) (Atlanta, GA). It has yet, however, to take final action approving or disapproving any of them.

In the meantime, on January 22, 1981, EPA issued a new policy describing the criteria it would use to judge the supplemental SIP revisions for extension areas that were due in mid-1982. The EPA received revisions from all extension areas and approved many of them. See, e.g., 48 FR 51472 (November 9, 1983) (New Jersey, ozone); 50 FR 25073 (June 17, 1985) (New York City, ozone and CO). The EPA has disapproved the SIP's for several extension areas and imposed the construction ban under section 110(a)(2)(I). See, e.g., 51 FR 33748–49 (September 23, 1986) (Phoenix and Tucson, CO); 50 FR 8616 (March 4, 1985) (Albuquerque, CO).

Beginning approximately in 1984, EPA began to explore how it might address the likelihood that many extension areas, as well as some non-extension areas that had already received SIP calls, would not attain the ozone and CO standards in the near term with their existing SIP's and pending SIP revisions.

In particular, EPA began to consider withholding both disapprovals of the pending plan revisions and the imposition of sanctions where, though the States had failed to demonstrate attainment of the standards by the end of 1987 (or even shortly thereafter), they had submitted commitments to adopt all control measures as they become reasonably available. The EPA solicited comment on whether such an approach would be consistent with the Act. See 51 FR 34428 (September 26, 1986) [soliciting comment on the "Reasonable Extra Efforts Program" ("REEP") for four areas in California].

After reviewing the language and legislative history of the relevant provisions of the Act,[2] EPA concluded that the REEP approach, as well as a similar approach called the "Sustained Progress Program" ("SPP"), would be inconsistent with the Act—for both extension areas that had not yet received approval of their Part D SIP's and areas that, though receiving such approvals, needed to revise their SIP's in response to notices of SIP deficiency under section 110(a)(2)(H). With regard to applying REEP and SPP to areas without approved Part D SIP's, EPA stated:

> On its face, Part D * * * contemplates an entirely different planning process [from REEP], under which such an areas [sic] must develop within a set period a full plan to produce attainment by a fixed near-term deadline.
>
> * * * * *
>
> The only argument supporting REEP in the face of this statutory language is the one sketched by EPA in its REEP proposal and by industry in its comments, namely, that some extension areas could produce attainment by the end of 1987 only by the application of measures that would tear the economic and social fabric of the areas and that the 95th Congress could not really have intended the areas to put such draconian measures into enforceable form and actually begin to implement them.
>
> * * * * *
>
> The argument, however, misses the point . . . In fact, the legislative history shows that the Congress set up the Part D system in order to force communities and industry to do their utmost to bring about attainment as rapidly as possible and expected that a future Congress would change the course it had set, if necessary, to avoid any unacceptable consequences.
>
> * * * * *
>
> In sum, REEP and SPP would frustrate the purposes of Part D by abandoning upfront, complete planning for attainment by a near-term fixed deadline in favor of iterative planning for progress alone."

[52 FR 26404, 26408 col. 3 (July 14, 1987)].

Based on this conclusion, EPA proposed to disapprove several pending ozone and CO SIP's for extension areas that did not contain persuasive demonstrations of attainment within such a short-term period, and to impose the construction moratorium in those areas. See, e.g., 52 FR 26431 (July 14, 1987) (California ozone and CO SIP's for the South Coast and Fresno; California ozone SIP's for Ventura and Sacramento).

With regard to areas that needed to revise their approved Part D SIP's in response to SIP calls, EPA tentatively concluded that, although the requirements for plan revisions in response to SIP calls are somewhat ambiguous, those provisions, like Part D, require the revised SIP's to demonstrate attainment by a fixed, near-term date after the SIP calls. The EPA stated:

> Section 110(a)(3)(A) provides that "[t]he Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of [section 110(a)(2)] * * *."
>
> * * * * *
>
> The natural reading of [section 110(a)(2)(A)] is that EPA must disapprove a SIP revision submitted by a State in response to a call by EPA under section 110(a)(2)(H) if the revision does not provide for attainment within 3 (in some cases 5) years from the time EPA completes rulemaking on the revision. Under this reading, EPA would have to disapprove any iterative planning approach . . . .
>
> This natural reading is clouded, however, by the fact that section 110(a)(2) seems to focus entirely on original SIP's, as opposed to revisions to pre-existing SIP's. Hence, one might argue, Congress did not necessarily intend submissions in response to a section 110(a)(2)(H) determination to be measured against the yardstick of whether they provide for attainment within such a short period. For cases where only draconian measures could produce attainment that quickly, arguably Congress would have given a stronger signal had it really intended such measures to become operational through State adoption and EPA approval.
>
> The EPA, however, is reluctant to attempt to transform the gap in precise interconnection between section 110(a)(3) and section 110(a)(2) into an expression of authority to embrace SPP. There is no such authority on the face of the statute, and the legislative history evidences Congress's consistent intent to require a SIP planning process that focuses on near-term attainment. [Footnote omitted.] Furthermore, the iterative planning under that program would require EPA ultimately to make choices between health and economic values that are essentially legislative in character and magnitude. It is not properly EPA's role as an administrative agency to take on the task of making such choices without a considerably stronger indication of Congressional delegation than now exists. Therefore, although as a matter of policy it may make little sense to impose sanctions in areas where near-term attainment is a practical impossibility, EPA has concluded tentatively that it lacks legal authority to implement SPP as originally envisioned in areas with fully approved Part D SIP's.

[52 FR 26404, 26409 (July 14, 1987)].

Based on this conclusion, EPA proposed to disapprove the pending SIP revisions for two areas, each of which had failed to respond to post-Part D SIP calls with demonstrations that they would attain the ozone standard by a fixed, near-term date [52 FR 26421 (July 14, 1987) (Dallas); 52 FR 26435 (July 14, 1987) (Atlanta)].

Discussion of Legal and Policy Issues

In the July 14 General Preamble, EPA listed several issues that the Agency must resolve before it can instruct States on how to correct their remaining ozone and CO nonattainment problems after December 31, 1987. Specifically, EPA mentioned:

- —What is the period after 1987 within which a SIP revision must assure attainment in order to warrant full approval under Part D or section 110(a)(3) [3 years? 5 years? 7 years?];
- —When sanctions, such as the construction ban in section 110(a)(2)(1) and highway funding restrictions, would lift once EPA has imposed them;
- —What "reasonable efforts" means for purposes of section 176(a) (e.g., whether adherence to REEP constitutes "reasonable efforts");
- —When section 316 sanctions would be appropriate;
- —How much time EPA should give States to respond to a SIP call;
- —When a State is not carrying out or implementing its SIP for purposes of imposing the sanctions in sections 173(4) and 176(b);
- —Whether and in what circumstances EPA may impose the ban in section 173(4) without simultaneously triggering the funding restrictions under section 176(b);
- —When EPA must act under section 110(c) to create a Federal implementation plan; what the content of such a plan must be;
- —How States should deal with interstate transport;
- —What degree of control of sources of nitrogen oxides is appropriate for purposes of attaining the ozone standard;
- —What constitutes RACM in the post-1987 era;
- —How States should treat rural nonattainment areas;
- —How much credit States may take in their attainment demonstrations for proposed and promulgated national control measures;
- —What dispersion models are appropriate for which nonattainment situations;

[2] This analysis appears in a memorandum of EPA's General Counsel, dated November 25, 1986. The evaluation in this memorandum is reflected in the General Preamble discussed in the text below.

—What the appropriate geographic scope of the planning area is for addressing ozone and precursor transport;
—What that scope is for addressing CO violations;
—What programs a SIP must contain for tracking implementation and RFP.

This section of today's notice discusses these issues for the purpose of generating public comment on how EPA should structure its final policy on correcting post-1987 nonattainment problems.

Discussion of Legal Issues Related to Post-1987 SIP Correction

I. Planning

A. *The applicable set of planning requirements.* The requirements of the Act that govern post-1987 air quality planning activities depend largely on the status of the planning efforts of the geographic areas in question. The various categories of areas are described below.

For the reasons described in EPA's November 1983 notice, EPA's full approval of a Part D SIP for a nonattainment area—whether it is an extension area or a nonextension area—amounts to a finding that the State has fulfilled and discharged for all time its Part D planning obligations. As indicated in that policy and the General Preamble published on July 14, 1987, any corrective SIP submitted for such an area in response to a SIP call under section 110(a)(2)(H) must meet the requirement of section 110(a)(3)(A), which governs SIP revisions other than Part D plans. That subsection in turn provides that "* * * [t]he Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of [section 110(a)(2)] * * *." Thus, the list of prerequisites to EPA SIP approval appearing in section 110(a)(2)(A)–(K) will apply to the post-1987 SIP revisions for areas with fully approved Part D SIP's.[3]

The new SIP revisions for areas whose Part D SIP's have never received EPA's approval remain subject to the Part D requirements. This group potentially includes areas whose Part D SIP's received approval on the condition that the areas cure certain deficiencies in the plans. Some of those conditions still have not been met and, in such cases, EPA may substitute a disapproval for its previous conditional approval and thereby keep the area subject to the Part D planning process.

Finally, some areas were never designated nonattainment under section 107 and therefore were never subject to Part D. If EPA believes that the existing SIP for such an area has not protected the area from air quality violations either in the area or nearby, it will issue a SIP call for the area. Under the reasoning of *Bethlehem Steel Corp.* v. *EPA*, 723 F.2d 1304 (7th Cir. 1983), however, EPA believes that it may not have the authority to redesignate an area to nonattainment (and thereby subject the area to Part D) without first receiving a request to do so from the affected State.[4] Thus, absent such a request, these areas can never become subject to Part D, and their corrective SIP revisions would instead be subject to the requirements of section 110(a)(2).

To summarize, there are several categories of areas, each having achieved a different status under the Act's planning requirements. The corrective SIP's for areas that have fully satisfied Part D or were never subject to Part D will be subject to the section 110(a)(2) planning requirements; the revisions for other areas will remain subject to or potentially subject to Part D.

Although on its face Part D differs substantially from section 110, the most important distinctions relate to issues involving sanctions and attainment dates. Some of the Part D provisions that are not also contained in section 110(a)(2) merely reflect Congress' view in 1977 of the specific requirements that States should add to previously deficient SIP's to ensure timely attainment. Many of these requirements (e.g., the requirement in section 172(b)(2) for all reasonably available control measures) arguably reflect Congress' view that SIP's cannot truly "insure attainment and maintenance," as that phrase is used in section 110(a)(2)(B), without meeting these additional requirements. For this reason, in certain respects, the policy proposed today draws upon Part D provisions as presumptive reflections of what Congress intended to require even of areas whose new planning is subject literally only to section 110. By minimizing differences in the planning requirements in different areas, this limited use of Part D provisions will serve EPA's general goal of making today's policy administrable with a minimum of confusion.

B. *Sanctions and the requirement to demonstrate attainment.* For the reasons described in the July 14, 1987, General Preamble, EPA believes that the Act permits EPA to grant full approval to a plan—whether it is subject to Part D or section 110—only if it includes a persuasive demonstration that the affected area will attain the relevant standard by a fixed date in the near term. The EPA also noted that the consequence of a State's failure to submit such a plan for a nonattainment area would be the application of the relevant construction moratorium in the area—under section 110(a)(2)(I) for areas subject to Part D, and under section 173(4) for areas subject to section 110(a)(2).[5] The EPA reiterates today its intention to apply this interpretation of the Act.[6]

The EPA made clear, however, that it did not intend to begin proceedings to impose the funding restrictions under section 176(a) in any area "* * * for so long as the State is making reasonable efforts to adopt and submit a plan that meets the requirements of Part D." (See 52 FR 26409 col. 3.) The EPA is still inclined to reserve this sanction for cases in which the State is not making reasonable efforts to submit an adequate plan.

[3] As the General Preamble noted, however, 52 FR 26409 col. 2, the fact that section 110(a)(2) seems to focus entirely on original SIP's, as opposed to revisions to preexisting SIP's, does cloud the interconnection between sections 110(a)(3) and 110(a)(2). The EPA solicited comment on that point in the General Preamble. While today's notice reiterates EPA's inclination to interpret the section 110(a)(2) requirements to apply to such "post-Part D" SIP revisions, EPA continues to solicit comment on the issue.

Assuming that section 110(a)(2) does apply to such revisions, it is clear that section 110(a)(2)(I)'s requirement that the SIP contain a construction ban to apply in an area lacking a Part D SIP would already have been satisfied in an area whose Part D SIP has received full EPA approval.

[4] The EPA solicits comment on whether it should follow the reasoning of the *Bethlehem* court in making redesignation decisions in States not under the jurisdiction of the Seventh Circuit. Today's policy proposal assumes a uniform application of the Seventh Circuit's conclusions throughout the country.

[5] Both of these bans by their terms apply only to designated nonattainment areas. This means that EPA will not be able to apply the ban to address inadequate responses to SIP calls in other areas—e.g., areas that, although not designated nonattainment, received SIP calls because they contribute significantly to their own or a nearby nonattainment problem. The EPA does intend, however, to apply the ban in a designated nonattainment area if the State's corrective plan does not adequately account for the contributing emissions from a nearby area within the same State, regardless of whether the contributing area is designated nonattainment. The requirements for accounting for such contributing emissions are discussed later in this notice.

[6] As noted above, EPA has already proposed to disapprove the pending SIP submittals for several areas because those submittals did not persuasively demonstrate short-term attainment and, consequently, to impose the relevant construction ban. Should EPA receive a new submittal for any of these areas before it would otherwise take final action on these proposals, it will review the submittal and weigh whether (and, if so, how) the submittal should affect EPA's final action on the pending proposal.

The General Preamble left open the questions of how to define the short-term attainment period needed to avoid a disapproval and imposition of the construction ban, as well as how, absent a demonstration of short-term attainment, an area could demonstrate that it is making reasonable efforts to submit an adequate plan and thereby avoid the section 176(a) funding restrictions. These issues and other issues related to sanctions are discussed below.

1. *Demonstration of Short-Term Attainment Necessary to Avoid the Construction Ban*—a. *Areas Subject to Section 110.* As explained above, the language of section 110(a)(3) appears to require that revisions in response to SIP calls meet the requirements of section 110(a)(2), though EPA has admitted that this natural reading is clouded by the latter paragraph's focus on original SIP's due in response to new or revised NAAQS. Section 110(a)(2)(A) sets forth the requirement for demonstrating attainment of the standards:

> The Administrator shall approve or disapprove such plan or portion thereof, if he determines * * * that —
>
> (A) except as may be provided in subparagraph (I), (i) in the case of a plan implementing a national ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e) of this section) in no case later than three years from the date of approval of such plan * * *.

Thus, the Act sets an attainment date, for the purpose of developing corrective plans, that is at most 3 years beyond the total time needed for the States to submit the corrections and for EPA actually to grant them final approval. The only exception is contained in section 110(e), which allows the Administrator to:

> extend the 3-year period referred to in subsection (a)(2)(A)(i) for not more than 2 years * * * if * * * the Administrator determines that—
>
> (A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such 3-year period, and
>
> (B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

The provision goes on to state:

> (2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—
>
> (A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1)(A) within the three-year period, and
>
> (B) such interim measures of control of the sources (or classes) described in paragraph (1)(A) as the Administrator determines to be reasonable under the circumstances.

The EPA intends to interpret this provision to allow a 2-year extension of the attainment date—beyond the period for SIP submittal, EPA approval of the SIP, and the 3-year period in section 110(a)(2)(A)—for any area that can show that attainment before the end of that period would require on stationary or mobile sources the use of technology or alternative means that are not reasonably available within that period. Beyond that, EPA intends to require such areas to show that they have included, in their corrective plans, provisions that will achieve the emission reductions achievable by applying "reasonably available alternative means" (RAAM) to such sources. (These interpretations and the reasoning supporting them are discussed in section IV.8., "Requirements of Expeditious Attainment Dates and Reasonable Progress.") The result will be that some areas that cannot show attainment within the 3-year period with RAAM, but can show attainment within the extended period with RAAM and other measures, would receive approval of their SIP's and avoid the construction moratorium.

The EPA believes that using the 3- and 5-year periods in section 110 would fulfill Congress' intent even if the language of section 110(a)(2) did not govern revisions submitted in response to SIP calls. If that language does not apply, then the Act contains a gap that EPA may fill in a manner consistent with Congress' likely intent. See generally, *Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984). Using the 3- and 5-year periods would be consistent not only with the periods chosen for the initial SIP's but also with the period Congress provided for submittal of the Part D SIP's required of nonextension areas. Section 172(a)(1) required those SIP's to provide for attainment by the end of 1982, 4 years from the date those submittals were due (January 1, 1979) [see section 129(c)].

To be sure, Congress provided a much longer attainment period for extension areas (from January 1, 1979 to December 31, 1987, approximately 9 years from the date the initial Part D SIP's were due). But it set up two planning periods for these areas—one to apply all "reasonably available" measures and a second to supplement those measures. Since most reasonably available measures should already have been applied in designated nonattainment areas by now, EPA regards post-1987 planning for these areas as comparable to the planning during the second Part D period. That period spanned from the July 1982 SIP submittal date [see section 129(c)] to the end of 1987, and is therefore roughly consistent with the 3- and 5-year periods EPA is contemplating for post-1987 SIP's.

b. *Areas Still Subject to Part D.* The EPA believes that the corrective plans for areas that have never fulfilled Part D must demonstrate attainment within periods similar to the section 110 periods to avoid the section 110(a)(2)(I) construction moratorium.

On its face, Part D calls for plans that provide for attainment by December 31, 1987. Since plans developed after 1987 cannot conceivably provide for attainment by the end of 1987, under the strictest reading of Part D these areas could never develop plans that meet Part D's requirements. If EPA were to adopt that reading, these areas would have to suffer under the section 110(a)(2)(I) construction ban for as long as they remain subject to Part D, that is, until they are redesignated to attainment.

The EPA does not believe that such an approach would be consistent with Congress' intent in adopting Part D and its sanctions. Construing the 1987 date as applying even after 1987 and, hence, imposing the ban to address the inability of Part D areas to plan after 1987 for attainment by that date, would amount to punishing these areas for failing to attain. For the reasons explained in EPA's November 1983 Part D policy, however, EPA regards Part D as a set of planning requirements, not requirements actually to come into attainment. Moreover, EPA believes that Congress created the Part D sanctions as means to produce better planning, not as a punishment for failure actually to attain. Since it will be physically impossible after 1987 for areas to plan to attain by the end of 1987, EPA intends to interpret the requirement to plan for attainment by that date as a legal impossibility. The EPA intends to select, in its place, a subsequent date consistent with what Congress would have intended had it known that EPA would be disapproving Part D submittals and thereby triggering new Part D planning for some areas so close to the end of 1987.

Although it is not clear what subsequent date Congress would have intended in these circumstances, the

history of the Act's planning requirements suggests that Congress would have provided these areas an additional period analogous to the 3- and 5-year periods in section 110. When Congress in 1977 directed EPA to initiate a new round of planning for areas that had failed earlier to attain under the section 110 requirements, it created new planning periods comparable to the section 110 periods rather than shortening those periods and thereby demanding plans for immediate attainment. (See discussion in previous subsection.) This indicates that Congress viewed periods comparable to the section 110 periods as the appropriate lengths of time for States to apply the types of controls that would produce attainment. For this reason, and because it would be administratively simpler to apply to Part D areas the same attainment periods as those applicable to section 110 areas, EPA intends to apply the 3- and 5-year periods in section 110 to areas still subject to the Part D planning requirements.

2. *Planning Necessary to Avoid Sanctions Other Than the Construction Ban.* As described earlier, the Act contains sanctions beyond the construction bans contained in sections 110(a)(2)(I) and 173(4). For the reasons discussed below, EPA regards each of these additional sanctions as available, for at least some areas, when EPA, at its discretion, makes certain determinations relating to planning and plan implementation. The remainder of this subsection describes these sanctions provisions and how EPA intends to exercise its discretion under them in reviewing planning performed after 1987. The EPA solicits comments on the application of these sanctions as discussed below.

a. *Funding Restrictions Under Section 176(a).* Section 176(a) states that EPA shall not approve or award grants for State air pollution control programs and the Department of Transportation (DOT) shall not approve any highway projects or award any highway construction grants under Title 23 of the U.S. Code (with certain exceptions) in any area where the primary standard has not been attained, where "transportation control measures" are necessary to attain the standard, and:

(3) where the Administrator finds after July 1, 1979, that the Governor has not submitted an implementation plan which considers each of the elements required by section 172 or that reasonable efforts toward submitting such an implementation plan are not being made (or, after July 1, 1982, in the case of an implementation plan revision required under section 172 to be submitted before July 1, 1982).

The EPA and the DOT published their joint policy on how to implement section 176(a) on April 10, 1980 (45 FR 24692). These sanctions have applied typically, if not exclusively, in areas that are violating the standards for ozone or carbon monoxide, because transportation control measures are needed to attain each of those standards in most areas that are nonattainment for those pollutants. Under the 1980 policy, EPA and DOT have imposed the sanctions only upon EPA's finding that the State has failed both to submit an adequate Part D plan for either of those pollutants *and* to make reasonable efforts to submit such a plan. Id.[7]

The reach of section 176(a) is much more limited now than when States were first submitting their Part D SIP's for ozone and CO. The EPA indicated in the November 2, 1983, policy that it viewed Part D as a one-time set of planning obligations that are completely discharged upon EPA's full approval of a plan meeting those requirements. Under that reasoning, any area whose Part D SIP has received EPA's full approval has met for all time "each of the elements required by section 172" and hence can never subsequently be found subject to the section 176(a) restrictions.[8]

The EPA is considering whether to retain this interpretation of section 176(a) beyond 1987. Retention would mean that only areas whose Part D plans have never received EPA's full approval would be potentially subject to the funding restrictions in that provision. This would include, as discussed above, both areas whose Part D SIP's are disapproved and areas that EPA finds have failed to meet important conditions placed on the Agency's earlier Part D SIP approvals. The EPA seeks comments on the legal and policy issues associated with this subject including the extent to which EPA is constrained from revising its interpretation.

Under the 1980 policy, EPA reaches its judgments case by case as to whether areas are making "reasonable efforts" to submit an approvable Part D plan. The EPA's interpretation of that phrase is necessarily guided by Congress' intent when it enacted the "reasonable efforts" test. The legislative history of that language reveals that Congress did not intend EPA to apply the section 176(a) sanctions to an area that had failed to submit an approvable Part D plan if the relevant State were diligently seeking a solution to the non-attainment problem, even if the solution were not available for years after the required attainment date. The first version of the provision appeared as section 110(h)(8)(A) of original Senate bill S. 252 to amend the Clean Air Act in 1977. See S. Rep. No. 95–127, 95th Cong., 1st Sess., 9 (1977). The original language would have established a duty to impose the funding restrictions upon the sole finding that a State had failed to submit an approvable plan for the relevant pollutant. The Senate added the "reasonable efforts" test to S. 252 in an amendment introduced by Senator Gravel. See 123 Cong. Rec. 18,475–77 (1977). The Senate adopted the amendment with little discussion, but the following colloquy indicates that failure to demonstrate attainment within the prescribed Part D periods would not alone amount to a failure to make reasonable efforts to meet Part D:

Mr. STEVENS. I am sure the Senator knows that Fairbanks has a problem and it is a naturally caused problem. I do not know of any solution to it yet.

Mr. GRAVEL. The fact that we are thinking of a solution and working on one will give it umbrage, under this amendment.

Mr. STEVENS. But if we cannot find a way by 1979 to solve it——

Mr. GRAVEL. If we cannot find a way by the year 2000, we still will not get hurt.

Mr. STEVENS. This means that the State of Alaska will not lose those funds if we cannot solve the icefog problem?

Mr. GRAVEL. If that happens, I will come to the floor of the Senate and slash my wrists.

* * * * *

Mr. MUSKIE. * * * Mr. President, as I understand the amendment, it is a reasonable modification of the committee amendment. It still retains some sanctions for those jurisdictions which make no effort, undertake no effort, to put together implementation plans, and so I am ready to accept it.

123 Cong. Rec. 18,476 (June 10, 1977). Congress then enacted section 176(a) with the Gravel amendment as part of the 1977 Clean Air Act Amendments.

The EPA intends to apply the reasoning underlying the above colloquy in deciding when to apply the section 176(a) restrictions to Part D areas after 1987. Specifically, EPA will not apply the restrictions just because an area does not demonstrate attainment of the standards within the short-term periods described above. Rather, EPA will reserve the sanctions to address a

[7] One U.S. District Court recently upheld this interpretation of section 176(a). *McCarthy* v. *Thomas*, D. Ariz., No. CIV 85–344–TUC–1WDB (August 11, 1987).

[8] Where EPA has approved an area's Part D SIP in reliance on the State's commitments to adopt additional measures, and the State has not met the commitments, EPA will look to see whether the failure is one of implementation or, instead, a basic flaw in the plan. In the latter case, EPA may rescind its approval of the area's SIP and, thereby, make the highway funding sanctions available once again.

State's failure to submit a plan that persuasively demonstrates (1) attainment by a date that, even if substantially later than the section 110 dates, is suitable for the area in light of its control needs, and (2) expeditious progress in the interim. A detailed discussion of what EPA would regard as "reasonable efforts" attainment dates and progress appears later in this notice.

b. *Sewage Treatment Grant Restrictions Under Section 316(b).* Section 316(b) states that EPA "may" restrict Federal grants for certain sewage treatment construction if it determines that:

> (2) the State does not have in effect, or is not carrying out, a State implementation plan approved by the Administrator which expressly quantifies and provides for the increase in emissions of each air pollutant (from stationary and mobile sources in any area to which either part C or part D of title I applies for such pollutant) which increase may reasonably be anticipated to result directly or indirectly from the new sewage treatment capacity which would be created by such construction.

The use of the word "may" in this provision makes this sanction available at EPA's discretion. Moreover, the provision's inclusion of areas "to which either part C or part D" applies indicates that EPA may apply the restriction even in areas that are not designated nonattainment for the pollutant involved.

Although technically EPA could apply this sanction in every area without a fully approved SIP [9] containing the required quantification, EPA believes that it would be more productive to use it only where the State is not making reasonable efforts, as in the case of the section 176(a) sanctions. Thus, although EPA may choose to apply the sections 176(a) and 316(b) sequentially rather than at the same time, depending on the appropriate strategy for inducing better State planning, EPA's decisions under both provisions will be based on the "reasonable efforts" factors described later in this notice.

c. *Air Grant Restrictions Under Section 176(b).* As described in the November 2, 1983, policy above and the General Preamble of July 14, 1987, EPA intends to continue to find that areas that do not respond adequately to SIP calls are failing to implement their SIP's and, therefore, become subject to the construction ban for nonimplementation under section 173(4).

On its face, section 176(b) requires EPA also to restrict Federal grants to a State's air pollution control program if the State is not implementing its plan. As indicated in the General Preamble, however, EPA intends to supplement the construction ban with the air grant cutoff only where doing so will not be counterproductive to good planning in the area. It makes little sense to withdraw financial support from the State workers on whom EPA depends for adequate planning to produce an approvable plan in response to a SIP call. The EPA believes that Congress would not have intended the cutoff to apply automatically where the State planners are making necessary progress in producing an adequate response to a SIP call.

3. *Prerequisites for Lifting the Construction Ban Once It Has Been Imposed.* Several areas are currently subject to the construction ban or will soon become subject to the ban because of their failure to demonstrate near-term attainment in the initial rounds of Part D planning [section 110(a)(2)(1) ban] or in response to SIP calls issued after passage of the 1982 attainment date [section 173(4) ban]. Other areas may become subject to the ban within the next few years if they do not respond adequately to the SIP calls EPA intends to issue after 1987.

For the reasons described above and in the November 2, 1983, Part D policy, EPA does not believe that the attainment date provisions in Part D require the imposition of the ban for the purpose of addressing an area's inability to attain by the applicable date. The EPA regards Part D as a set of planning requirements and the sanctions as inducements for the State to do better planning, not as punishments for failure actually to attain. For similar reasons, EPA would not impose the section 173(4) ban just because an area subject to section 110 planning requirements had failed to attain.

Consistent with this reasoning, EPA believes that a construction ban imposed for past planning failures should be lifted upon EPA's approval of a plan that meets the Act's post-1987 requirements. This means that an area that becomes subject to the ban because it cannot demonstrate attainment of the standards in the short term after 1987 could be relieved of the ban 3 (or 5) years before the attainment date in the area's long-term "reasonable efforts" demonstration. At that time, the long-term demonstration will effectively become the short-term demonstration that the Act requires for plan approval.

C. *Promulgations of Federal Plans*—1. *Comprehensive Plans.* Section 110(c)(1) of the Act states, in pertinent part:

> The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—
>
> (A) the State fails to submit an implementation plan which meets the requirements of this section,
>
> (B) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or
>
> (C) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H).
>
> * * * * *
>
> The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

On its face, this provision appears to require EPA to promulgate comprehensive Federal plans as soon as a State's initial planning attempt is found to fall short. Section 307(d)(10) of the Act provides for one potential extension of this period. That provision states:

> Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than 6 months after date of proposal may be extended to not more than 6 months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the Agency, adequate opportunity to carry out the purposes of this subsection.

The promulgation of Federal plans is listed as one of the actions subject to subsection (d) of section 307 [see section 307(d)(1)(B)]. If EPA were required to promulgate such a plan within 6 months of the triggering events set forth in section 110(c)(1) and the proposed promulgation were required to occur promptly "after" the event triggering a duty to promulgate, the opportunity for the extension provided by section 307(d)(10) would apply to such promulgations. More specifically, once EPA proposed a Federal plan "promptly" after the triggering event, EPA could extend the date for final promulgation to 6 months from that proposal, even if the resulting promulgation date extended beyond the section 110(c) period of 6 months from that event.

[9] This section discusses when EPA intends to apply the section 316(b) sanction to address planning failures. The question of when to use the provision to address nonimplementation of plans is discussed later in this notice.

Despite this surface reading of sections 110(c)(1) and 307(d)(10), EPA believes that it should interpret the promulgation time set forth in section 110(c) as not commencing unless and until the relevant sanctions have had a reasonable opportunity (but have failed) to induce the State to make reasonable efforts to develop its own corrective SIP even if that date is substantially later than the dates described above. The EPA believes that this interpretation best serves the purposes of the Act. As explained below, this view is grounded in a conflict between the promulgation provision and the sanctions provisions.

Congress enacted section 110(c) in 1970 as the sole means to ensure that its goal of clean air was not frustrated in the event a State defaulted on its planning obligations. The EPA used its promulgation authority in the mid-1970's to address the failure of several States to develop adequate transportation control plans (TCP's) needed to attain the CO and ozone NAAQS. The EPA promulgated its own TCP's, which required those States to adopt various transportation control measures (TCM's), and threatened to seek direct judicial enforcement of the plans. Several of the States challenged the Administrator's statutory and Constitutional authority to adopt such measures. Most of the courts agreed with the States and enjoined EPA's efforts to implement the Federal TCP's. See H.R. Rep. No. 95294, 95th Cong., 1st Sess., 286–88 (1977), reprinted in 4 Legislative History at 2753–55, for a discussion of these cases.

In reaction to this history of confrontation over EPA's use of section 110(c), Congress in 1977 adopted amendments to add new sanctions, including the construction ban, as a means to ensure submittal of State plans. The report on the House of Representatives bill to amend the Act (H.R. 6161) reviewed the history of EPA's inability to achieve the statutory objectives through the use of section 110(c) promulgations, and concluded that the wisest course was to adopt "* * * an approach that is intended to involve the least possible intrusion into State affairs consistent with the primary task of protecting public health." Id. at 4 Leg. Hist. 2755. In particular, the report stressed the need to induce States to adopt and implement their own TCP's voluntarily, noting that, "as a practical matter, State and local governments are in a better position than EPA to resolve those pollution problems, which involve millions of motor vehicles, through inspection and maintenance programs and similar measures." "H.R. Rep. No. 95–254, 95th Cong., lst Sess., 288 (1977)."

Similarly, the committee report on the Senate bill (S. 252) stated that the transportation control aspects of the bill had been designed to take into account that "* * * [t]he Federal Government does not have and will not have the resources to do an effective job of running the air pollution control programs of the State." S. Rep. No. 95–127, 95th Cong., lst Sess. 10 (1977), reprinted in 3 Legislative History at 1384–85. The Senate committee noted that "transportation planning," in particular, "is a local political process" and that any amendments to the Act should create incentives for local planning and remedy the "lack of local involvement in the process." Id. at 3 Leg. Hist. 1412.

Congress thus enacted the Part D sanctions in 1977 specifically to create new means of inducing this State and local planning. Congress failed, however, to amend section 110(c) when it added the Part D sanctions. That created an unresolved conflict between the literal language of section 110(c) and the congressional purpose sought to be implemented through the new sanction authority. For, if EPA were required to promulgate a Federal implementation plan within 6 months of disapproving a plan and imposing the construction ban, it would rarely be the case that the ban, or any other sanction, would be in place for sufficient time to achieve the congressional purpose of inducing the development of adequate State plans.

The EPA believes that it should reconcile the language and purposes by concluding that it must promulgate a Federal plan only after the sanctions have had a reasonable opportunity, but have failed, to induce the State to create or maintain reasonable efforts to create an adequate corrective SIP. In this way, the sanctions can still serve as an incentive for State planning rather than merely as a punishment, and Federal promulgation is reserved for the rare cases in which, despite the presence or threat of sanctions, the State still has not responded with adequate planning efforts.[10]

For those new areas for which Federal promulgation is required, EPA solicits comments on what attainment period would govern EPA's plans. The short-term period described earlier might apply to such Federal plans. Alternatively, perhaps EPA could promulgate a plan with a more suitable, longer-term attainment date so long as EPA included a construction ban of the scope of the section 110(a)(2)(I) ban in the plan. The EPA would like to receive the public's views on these and any other options that might be available.

2. *Promulgation of Stopgap Measures Pending the Creation of Adequate State Plans.* The EPA believes that it may have authority under section 110(c) to promulgate discrete control measures that would apply in areas that are not making reasonable efforts to submit adequate plans. These would be "stopgap" measures that would apply only during the period before which the State gets its planning back on an acceptable track. Such measures would produce the incidental benefit of applying additional pressure, beyond the sanctions, for the State to adopt adequate plans.

For example, under section 110(a)(5)(B), the Administrator has the authority to "promulgate, implement, and enforce regulations under section 110(c) respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources." Thus, although the highway funding limitations required by section 176(a) may no longer be available after an area has received full EPA approval for its Part D plan, the indirect source review provided by these authorities offers an opportunity for EPA to review projects to ensure that their construction does not make air quality worse while the State develops an adequate plan.[11] Indeed, it is possible that EPA could, under such a program, declare in effect a moratorium on further federally assisted highway and airport construction on the ground that construction of such facilities could lead to further growth in vehicle miles traveled (VMT) that in turn would exacerbate air quality problems. Such a ban would be lifted when EPA either promulgated such a comprehensive plan or determined that the State was making reasonable efforts toward submitting an adequate plan.

The EPA can imagine other potential stopgap Federal measures suitable for such circumstances. For example, EPA might consider using its authority in section 110(a)(2)(D) to promulgate tightened requirements for new source

[10] One U.S. District Court, however, recently held that the duty to promulgate arises upon the disapproval of a State plan, regardless of the usefulness of sanctions in obtaining a better State plan. *McCarthy* v. *Thomas*, D. Ariz., No. CIV–85–344–TUC–1WDB (August 11, 1987).

[11] The EPA could not ban the construction of indirect sources of pollution that are not federally assisted because of the prohibition in section 110(a)(5)(A) of the Act.

review during this interim period—e.g., subjecting some non-major sources and modifications to a new source review permitting process similar to that prescribed by section 173 of the Act. The EPA's choice of measures would be guided partly by the likelihood that the measure would significantly benefit the environment without irrationally singling out a particular segment of the source population.

The EPA solicits comment on whether it should plan for such stopgap Federal promulgations.

II. Plan Implementation

The EPA has been reviewing the approved portions of the existing SIP's for ozone and CO to determine whether the States are carrying out their plans. The Administrator alerted the relevant State Governors of this effort by letter in April 1987. This implementation review and any consequent decisions to find nonimplementation will occur on a track parallel to the new round of planning initiated by this policy.

When EPA believes that a State is not carrying out its SIP, it may commence a rulemaking to make a formal finding of nonimplementation. A final finding that a State is not carrying out its plan will result automatically in the imposition of the construction moratorium set forth in section 173(4). That ban will remain in place until EPA finds through new rulemaking that the State is carrying out the relevant provisions of its plan.

Although section 176(b) on its face appears to call for an automatic cutoff of Federal grants for air program grants to a State that is not implementing its SIP, EPA intends not to use that sanction where it interferes with the goal of achieving plan implementation. Since cutting the funds of the State agencies implementing the State plan can be counterproductive, Congress probably did not intend such a result in these circumstances.

Finally, in some cases, EPA may choose to use its authority under section 113 to enforce unfulfilled commitments in a SIP.

Discussion of Policy Issues

Introduction

In determining an area's attainment status under the ozone standard, EPA uses air quality data for the most recent 3-year period for which data are available. This period reflects the statistical form of the ozone standard itself, which defines a violation as more than one expected exceedance of the standard on the average per year. See 40 CFR 50.9 (1986). As of today's proposal, the most recent ozone data available are from the 3-year period 1984–1986. By the date of the final notice, EPA expects to have 1985–1987 data available for use in deciding which areas are unlikely to attain by the end of 1987.

As a counting basis for the number of areas violating the ozone standard, EPA intends to group data from air quality monitors according to a consistent definition of regions. The EPA intends to use the larger of the Metropolitan Statistical Area (MSA) or the Consolidated Metropolitan Statistical Area (CMSA) (if one exists), as defined by the Office of Management and Budget, as the geographical area within which monitoring sites are grouped for analysis. Sites falling into separate non-MSA counties will be counted as representative of discrete areas.

Using these counting conventions, the 1984–1986 data indicate that 62 areas violated the ozone NAAQS during that period. These areas are listed in Table A–1 of Appendix A. Portions of these areas are designated nonattainment for ozone under section 107 of the Act. See 40 CFR Part 81. Almost half of the 62 areas appear to be only marginally nonattainment [i.e., have a current air quality "design value" [12] of 0.13–0.14 part per million (ppm)].

With a few exceptions, all of the major population centers in the country violate the ozone standard. Nonattainment is most severe in the Los Angeles area and some other California cities, the "Northeast Corridor" (roughly from metropolitan Washington, DC, to Portland, Maine), and the Houston area. The EPA does not expect the larger cities in these areas to be able to attain the ozone standard without massive reductions in emissions, particularly to offset growth in mobile and area sources of those emissions.

For determining whether an area is nonattainment for CO, EPA uses air quality data from the most recent 2-year period for which data are available. The standard defines a violation as more than one exceedance of the prescribed level in a year. [40 CFR 50.8 (1986)] (The EPA looks at data from the most recent 2-year period to ensure that attainment shown in one year is supported by data in the second year and is not merely an aberration.) Table A–2 in Appendix A shows that 65 areas violated the CO NAAQS during at least 1 year in the period 1985–1986. Although most of these areas are MSA's (some are non-MSA's), EPA generally intends to use the CMSA (where one exists) for SIP calls and planning purposes. By the date of EPA's final policy, EPA expects to have CO air quality data for 1986 and most of 1987 available for use in making decisions on SIP calls.

Nationwide, CO concentrations have generally been declining each year, largely as a result of the reductions being achieved by a combination of the Federal Motor Vehicle Control Program (FMVCP) and vehicle inspection and maintenance (I/M) programs. The EPA expects that the 1986–1987 data may indicate that fewer than 65 areas are violating the CO standard. Because of expected continuing reductions from these existing programs for the short term, it is possible that only a limited number of areas will need substantial additional reductions beyond those programs to attain the standard.

Because EPA uses multiyear periods of data (3 years for ozone, 2 years for CO) for SIP call and redesignation purposes, it is possible to project which areas will remain in nonattainment during the next data period by examining only the most recent of the data. For example, any area with a total of more than three exceedances of the ozone standard during 1985 and 1986 will be unable to avoid a showing of nonattainment during the 1985–87 period, since the ozone standard allows no more than three exceedances during 3 years. Similarly, any area that measures two or more exceedances of the CO standard in 1986 will be unable to show attainment during the 1986–87 period, since the CO standard allows no more than one exceedance in any year. By this method, EPA has identified in the tables 45 areas for ozone that will be nonattainment during the 1985–87 period and 52 areas for CO that will be nonattainment during the 1986–87 period.

In addition, Appendix A lists areas that may not attain during the 1985–87 period (1986–1987 for CO), but only if the 1987 data show nonattainment. These areas are comprised of two categories. The first are those exceeding the NAAQS during 1984–86 (1985–1986 for CO), but not identified on the lists as nonattainment during the 1985–87 period (1986–1987 for CO). Second are any areas which currently measure attainment, but have recently measured nonattainment (e.g., during the 1983–85

[12] The current air quality "design value" is the ozone level which represents the degree to which the 0.12 ppm NAAQS is exceeded. Where 3 years of complete data (i.e., at least 75 percent of the days during the ozone season having valid daily maxima) exist at a site, the site-specific design value is the fourth highest measured ozone level during the period. For 2 years of complete data, it is the third highest, and for 1 year of complete data, it is the second highest. Most cities had 3 years of complete data. In the case where there is more than one monitoring site, the design value for the MSA or CMSA is the highest of the site-specific design values.

period for ozone or 1984–1985 for CO). Any area showing renewed nonattainment in the 1985–87 period (1986–1987 for CO) is likely to come from one of these two groups. It is also possible that areas which have not recently (or never) measured nonattainment could begin to exceed the standard. However, due to the size of this potential group, EPA has not chosen to identify these areas on the tables.

In early 1988, EPA will compile for publication a new list of areas violating the ozone and CO standards, based on inclusion of the available 1987 air quality data. Shortly thereafter, and after EPA takes final action on this policy, EPA will issue a SIP call to each area on the new list. The SIP calls will trigger the applicable requirements for submitting an approvable SIP revision.

The EPA believes that data collected from the 1985–1987 ozone seasons will provide an adequate basis for determining whether an area's existing SIP is adequate to produce attainment by the end of 1987 or shortly thereafter. Plans for areas that projected attainment by the end of 1982, but that were experiencing violations during 1985–1987, are probably inadequate to assure attainment by any short-term date, and to assure maintenance thereafter.[13] Those plans have had 5 years beyond the projected attainment date to produce attainment, but still have failed to do so. For that reason, EPA believes that it can reasonably presume that those plans need strengthening to produce attainment in the near term. It is doubtful that those plans will produce sufficient emissions reductions shortly after the summer 1987 ozone season to shift those areas from nonattainment to attainment in the short term. While marginal nonattainment extension areas may be recording fewer ozone standard exceedances, EPA proposes to require these areas to prepare SIP revisions demonstrating attainment and maintenance of the standard. Based on EPA's experience with withholding SIP calls from marginal nonattainment areas subject to the 1982 attainment date, EPA has little confidence that the existing SIP's for areas that are marginally nonattainment today are adequate to assure attainment and maintenance in the short term. Should air quality data for the period 1986–1988 reveal, however, that an area has attained the air quality standard, the area may be eligible for a redesignation to attainment or some other form of relief from the obligation to submit a revised SIP according to the schedule described below, subject to the maintenance requirements of EPA's policies, including today's proposal. Moreover, if an area with a recently approved SIP is slated to achieve significant additional emissions reductions and its SIP projects attainment very soon after 1987, the area may be eligible for similar relief regarding submittal of a revised SIP. The EPA solicits comments on whether such relief is appropriate.

For CO, EPA intends to examine the available 1987 data before determining which areas should receive SIP calls in 1988; however, EPA does not expect that all data through the end of the year will have been reported by the date of the final policy notice. In some cases, EPA may rely on the 1985–86 data to determine an area's air quality status. Similar to the above treatment for ozone, should CO air quality data for the 1987–88 period reveal that an area has attained the standard, the area may be eligible for redesignation to attainment or some other form of relief from the obligation to submit a revised SIP, subject to the maintenance requirements of EPA's policies, including today's proposal.

I. Affected Areas

Each area that receives a SIP call will be subject to the requirements of EPA's final policy on post-1987 ozone and CO SIP revision requirements and, therefore, will be required to prepare and submit a revision to its SIP according to the schedule described in section II of this policy statement. In addition, EPA proposes to require that all areas requesting redesignations under section 107 in the future (i.e., after the date of today's notice) be subject to the maintenance and redesignation requirements of this policy (see Section V).

A. *Ozone Nonattainment Areas.* Where EPA bases the SIP call on violations of the ozone standard, the minimum affected area shall be the county in which the violation was measured. For an affected county located within an MSA or within a CMSA, EPA proposes to expand the SIP call to include all the counties within the MSA or CMSA.[14] By definition, a MSA contains a large urban center together with adjacent communities that have a high degree of social and economic integration with that population center. Counties included within an MSA have similar population densities and percentages of commuters to the urban core and, hence, large transportation systems and associated vehicular emissions. Due to these emissions and emissions from stationary sources located throughout the MSA/CMSA, EPA believes that attainment of the ozone standard may not be fully realized in these areas unless the State considers the emissions originating from all the counties within the MSA/CMSA [15] in its control strategy. As explained in section IV.E., control of MSA/CMSA emissions will also help reduce transport of ozone or ozone precursors downwind.

Subjecting the entire MSA/CMSA to the SIP call will not, however, necessarily require that the State control emissions from sources located in these outer counties in the same way as it would if those sources were located within the actual "central" county(ies).[16] See Section IV.A. for control requirements. Rather, the State may control these emissions to the extent necessary, provided that, in accounting for all emissions in this broader "demonstration area," the revised plan will produce progress and attainment according to the requirements of EPA's policy.

Where a previous SIP has used a planning area (or section 107 designated nonattainment area) larger than the MSA/CMSA, that larger area should continue to serve as the planning area. For areas previously found to be rural nonattainment areas under the old policy that are classified as urban (MSA) under today's proposal, the minimum planning area will be the MSA.

The EPA has historically established fewer requirements for rural nonattainment areas than for urbanized areas. The air quality problems of the rural areas often appear to be caused by the transport of ozone from upwind areas, rather than the generation of emissions locally. In previously issued

[13] Some nonextension areas received SIP calls in 1984 or 1985 and submitted SIP revisions recently. The EPA expects to act on these revisions over the next several months. The EPA's approval of such a revision will indicate that EPA may not need to issue a SIP call for such an area in early 1988. Disapproval, however, will act effectively as a reaffirmation of the SIP call for such an area.

[14] Color maps showing counties (or, in New England, parts of counties) contained in MSA's/CMSA's are available from the U.S. Government Printing Office. Specify "United States Maps, GE-50, No. 84, CMSA's, PMSA's, and MSA's, 1987."

[15] As discussed in the section III, EPA intends to require also that the demonstration reflect emissions from certain large stationary sources located outside, but within 25 miles of, the MSA/CMSA boundaries. This "extra-MSA/CMSA" area, however, will not technically be subject to the SIP call.

[16] As defined by the Bureau of the Census, a central county of an MSA has at least 50 percent of its population living in the urbanized area. For the New England States this shall mean the central core as also defined by the Bureau of the Census.

guidance (e.g., at 44 FR 20372, April 4, 1979), EPA stated that it would not require rural areas to submit a demonstration of attainment but, instead, would call for such areas only to implement a small set of stationary source control measures to create growth allowances that would obviate the need for case-by-case emissions offsets for new source construction.

The EPA is proposing today to change its policy definition of "rural areas" from an area with an urbanized population of less than 200,000 to any county outside an MSA. An MSA is generally an urbanized area with a population of at least 50,000. Some rural counties adjacent to MSA's have ambient monitors that have currently recorded violations of the ozone standard. The EPA proposes to include these rural adjacent counties with monitored violations as part of the MSA/CMSA planning area and to include them as a part of the MSA/CMSA SIP call area. The EPA believes that in some parts of the country these adjacent rural counties may be quite large and might include areas that are distant from the urban (MSA) area and are likely not contributing significantly to the nonattainment problem. The EPA is considering whether the more distant parts of these rural adjacent counties should be included in the planning area for the MSA and invites comment on this issue. In particular, EPA solicits comment on the need for excluding these more distant areas from the planning area and on the appropriate criteria (e.g., population or emission density, percent of county emissions covered, other jurisdictional boundaries) to use in making such an exlusion.

The EPA also proposes to distinguish between "self-generating isolated rural areas" (those areas that produce or significantly contribute to local ozone levels), and "nonself-generating isolated rural areas" (those areas that do not significantly contribute to local ozone levels). Each isolated rural area receiving a SIP call must submit a demonstration of which classification applies. Appendix B of this policy discusses the procedures for distinguishing between the two types of isolated rural areas. A demonstration that an area is nonself-generating must be accompanied by an identification [17] of the upwind area or areas within 10 hours travel time believed to be causing or contributing significantly to local nonattainment. The EPA will require these upwind areas to account for and control, in their demonstrations and control strategies, their contribution to ozone problems in the isolated rural areas. In the event an upwind area causing or contributing significantly to a rural area's nonattainment would not otherwise be subject to a SIP call, EPA will issue the upwind area such a call and require that the plan revision for that area demonstrate attainment in the rural area.

B. *Carbon Monoxide Nonattainment Areas.* Where a nonattainment area measuring a violation of the CO NAAQS is located within an MSA/ CMSA, the entire MSA/CMSA will be subject to a SIP call. If the area measuring CO violations is not located within an MSA/CMSA, then the county in which the violation occurs shall be issued the SIP call. States must account for emissions from sources throughout the SIP call area in developing the control strategy and attainment demonstration. The EPA will provide an exception to this requirement for an area affected only by localized points of traffic congestion, or "hotspot," CO problems.[18] For such an area, EPA will allow the planning area to be reduced to an area consistent with the scope of the nonattainment problem and its likely solution, in accordance with modeling requirements described in section III of this policy.

II. Planning Schedules

A. *Basic Schedule for Response to SIP Call.* Section 110(c)(1)(C) of the Act indicates that a State's response to a SIP call should be submitted within 60 days "or such longer period as [the Administrator] may prescribe." The EPA believes that this language authorizes the Administrator to prescribe any additional period for the State response that is reasonable in light of the circumstances.

The EPA believes that preparation of effective ozone and CO plans (including the air quality analysis, evaluation and selection of measures, and demonstration of attainment) will require a major effort from State and local agencies and officials as well as from EPA. Air agencies will need to identify and evaluate a number of control options against various criteria (e.g., emission reduction potential, cost, and administrative feasibility) and then rely on State and local decision-making processes to arrive at their final plans. Since many of the easier, more obvious control measures have been implemented in the past for both ozone and CO nonattainment areas, EPA believes that development of post-1987 plans may be especially difficult and time-consuming. Therefore, EPA is proposing to allow States a greater amount of time than generally allowed in the past in which to develop and submit their ozone and CO plans—specifically, 2 years from the SIP call. This planning period, however, will not allow States to modify existing planning or implementation schedules that apply to them now. These schedules will remain in effect until and unless the EPA-approved post-1987 SIP (developed in accordance with the provisions of this policy) modifies the schedules.

The EPA Regional Offices will work closely with State and affected local governments during the preparation of the ozone and CO SIP revisions to ensure that interim products and activities are completed on a schedule that will enable the submittal deadline to be met. For example, EPA will require States to submit a draft emissions inventory within 12 months of the SIP call to ensure that adequate progress is being made to develop the inventories consistent with national guidance. In addition, within 6 months after the SIP call, the State must review with EPA its schedules, commitments, and any progress in the development and adoption processes regarding SIP rule discrepancies and inconsistencies, previously required measures (e.g., rules for sources covered by CTG's), and anticipated measures for satisfying emission reduction requirements, particularly where those measures will require extra time for development and adoption.

Also, to ensure that the State and local governments give high priority to the development of the SIP, the Governor, after consultation with principal elected officials of each local government in the affected area, must submit within 3 months of the SIP call a written commitment to develop a SIP revision in accordance with this policy.

B. *Schedules For Special Situations.* The proposed policy will provide all States 2 years in which to develop and submit their ozone and CO plan revisions. Although EPA has identified two situations (described below) in which additional time may be needed to develop a refined SIP call response, EPA proposes to require areas in these situations still to submit an initial (2-year) revision that is as complete as feasible. In addition, a State must review with EPA within 1 year after the SIP call its expected need for additional time to complete development of the SIP in accordance with the two situations

[17] Isolated rural areas in the Regional Oxidant Model (ROM) domain (i.e., the Northeast) found to be nonself-generating must delay identification of upwind areas until the ROM results are available.

[18] For determination of hotspot problems, see section III.A.

described below. The State should clearly demonstrate why the complete submittal cannot be made within 2 years. For example, areas expecting to need long-term measures (see discussion below) would have to identify those measures within 1 year so that EPA could concur that additional time was justified for development and adoption of the measures.[19]

1. *Isolated Rural Areas.*[20] Some rural areas may not have or may not be able to produce within the 2-year planning period sufficient air quality monitoring data to determine whether their nonattainment problems are caused predominantly by emissions in upwind areas or their own emissions. This determination (i.e., whether the area is self-generating or not) will have a significant effect on the requirements for an area.

If the area does not have sufficient air quality monitoring data at the time of the SIP call, the State must develop such data as expeditiously as possible. The EPA realizes, however, that sufficient data may not be able to be produced in time to determine if the area is self-generating and to develop and adopt the appropriate measures (should additional measures be required) within the 2 years allowed for the SIP submittal.

Therefore, in these areas, EPA proposes to require that only the minimum control requirements described later in this notice be included in the SIP revision due 2 years from the SIP call. (See section IV.A. for the specific requirements for the different types of rural areas.) The initial SIP must also contain a schedule for completing the air quality monitoring, self-generation determination and modeling analysis, and a schedule for developing and adopting additional measures the modeling shows are needed.

The EPA expects the air quality monitoring and data analysis to be concluded expeditiously so that further planning can be conducted. The additional required planning after the monitoring and data analysis (including the development and adoption of measures) must be completed no later than 1 year from the date the initial SIP revision was due. For areas found to be nonself-generating, the second SIP submittal must summarize the air quality analysis and identify which upwind areas are responsible for the ozone violations in this area.[21] The plan revisions for the upwind area(s) must be revised to provide for expeditious attainment in the downwind area. The EPA assumes that the determination that an isolated rural area is nonself-generating will be made soon after the initial submittal due date so that the upwind area can be notified and can revise its SIP expeditiously. The EPA will work with upwind areas to identify an appropriate timeframe for revising their SIP's; however, the SIP revision for the upwind area to account for nonattainment in the downwind nonself-generating area will be due no later than 1 year from the 2-year submittal date.[22]

If the air quality monitoring shows that the area is self-generating, EPA expects the State to submit expeditiously a SIP satisfying the requirements for such areas. The EPA will work with the State to establish an expeditious time frame for submittal, extending no more than 1 year from the 2-year submittal date.

Some isolated rural areas may already have sufficient air quality monitoring data to determine whether they are self-generating. Knowing whether they are self-generating will determine the applicable requirements for these areas, as described later in this notice, within the initial 2-year planning period. These areas generally must submit their complete SIP revisions within 2 years of the SIP call.

2. *Areas Needing Long-term Measures.* Some areas requiring large emission reductions may need to adopt nontraditional measures in order to demonstrate attainment. Some of these measures may require complex planning or review and may be subject to adoption processes that cannot be completed within the 2 years between the SIP call and the generally applicable SIP revision due date. These measures would be those that require multiple approvals and/or planning and engineering studies before such approvals can be obtained. For example, most stationary source controls [such as control technique guideline (CTG) reasonably available control technology (RACT) regulations] would involve adoption primarily by the State and implementation over a relatively short time period. On the other hand, certain transportation control measures (such as a major mass transit system) would likely require preliminary design studies before being adopted by the affected government bodies, which could include a number of local, regional, State, and Federal agencies and officials. In addition, some measures may be controversial and unfamiliar in the affected area and may require extensive public awareness and involvement processes before adoption of the measure can occur. Examples of these measures include programs to alter vehicle use patterns (e.g., alternate drive-day programs) and measures to regulate residential emission sources (e.g., household products, lawn mowers). The EPA generally regards these types of measures as long-term measures more because of the difficulty and time requirements associated with planning and adopting the measures, not the time needed to implement them. The EPA recognizes, however, that some long-term measures likely will also require considerable time for implementation.

Even if an area needs long-term measures, the initial submittal (due in 2 years) for the area must include the demonstration of attainment, an identification of long-term measures (with expected emission reduction benefits along with a description and commitment to the process and schedule to complete all planning, review, and decision steps leading to adoption of those measures), and full adoption of all other measures. The EPA believes that up-front commitments to adopt these long-term measures are needed to ensure that the SIP submittal represents a complete control strategy for the area. The EPA recognizes that during the development and adoption process for these long-term and somewhat complex measures, strategy options may need to change. Therefore, EPA will allow the State to substitute measures for these long-term measures, as long as the

[19] The two situations described in the text below do not include areas involved in the analysis of ozone transport in the Northeast (see IV.E. "Transport Considerations"). These areas will not have the results of the ROM analysis until well after the 2-year submittal deadline. The EPA believes, however, that currently available models and methodologies will be adequate to enable these areas to estimate transport effects as well as impacts from their own sources before the ROM results are available. Control requirements can thus be determined and included in the 2-year plan submittal based on these analyses. Once the ROM analysis is completed, these plans can be revised to the extent necessary to incorporate additional controls to reduce downwind impacts. The EPA expects the plans to be revised expeditiously after the ROM results are available upon completion of the ROM analysis. The EPA will work with States in determining schedules for revising their SIP's upon completion of the ROM analysis but expects all revisions to be accomplished and submitted within 5 years of the date of the SIP call.

[20] Defined as any county experiencing ozone violations and not within or adjacent to an MSA or CMSA. Requirements for counties that experience ozone violations and are adjacent to an MSA are discussed above in I.A., "Ozone Nonattainment Areas" and discussed later in this notice.

[21] Areas that are found to be nonself-generating and that are in the ROM domain (see section IV.E.) cannot make an acceptable determination of the responsible upwind area(s) until the ROM results are available.

[22] Of course, in some cases, the upwind areas will already have begun revising their SIP's because of their own nonattainment problems and may already be accounting adequately in their revisions for effects on all downwind areas.

substitute measures would produce comparable emission reductions and are adequately adopted within the time period allowed for the second SIP submittal. The State must complete full adoption of and submit the long-term measures expeditiously, but no later than 3 years from the due date for the initial SIP. The EPA Regional Offices will work with States needing long-term measures to develop expeditious schedules for completing the necessary planning and adoption activities.

In general, EPA expects these areas to consider first both traditional and nontraditional measures which can be developed and adopted within the 2-year initial planning period before adding long-term measures to the control strategy. The EPA expects to provide guidance concerning long-term measures, particularly with regard to the types of measures for which less than complete adoption by the 2-year submittal will be allowed, what types of areas will likely need long-term measures (and, therefore, additional time for the complete adoption of all measures) and what information and commitments will be required in the 2-year submittal. (See Section IV.C.4, "Requirements for Adoption of Transportation-Related Control Measures.")

III. Modeled Demonstration of Attainment

As described above, EPA believes that the Act requires all SIP's to contain control measures demonstrated to result in attainment of the ozone and CO NAAQS as expeditiously as practicable, but by a date certain. The EPA historically has required that States demonstrate attainment through the use of computer models that predict the effects of emission reductions on ambient pollutant concentrations.

The EPA recognizes that the use of modeling and model data bases for ozone and CO in the past for various reasons has led to imperfect predictions of attainment. However, EPA continues to believe that modeled attainment demonstrations that are assembled with reasonable care and are consistent with EPA guidance can provide a rational basis for EPA's determinations of whether SIP's "provide for" timely attainment, within the meaning of sections 172 and 110 of the Act. As a result, EPA intends to continue its reliance on modeling analysis in the post-1987 round of air quality planning as modified by subsequent experience.

The proposed Policy Statement near the end of today's notice explains in detail EPA's proposed requirements for assembling adequate modeling demonstrations. A brief summary of the more notable aspects of those requirements appears below.

A. *Models*—1. *Ozone.* Determination of the reduction in VOC's or NO_x needed to attain the ozone NAAQS may be made using one of two modeling approaches. The preferred model is the Urban Airshed Model (UAM), a photochemical grid model. The second acceptable approach is the use of the Empirical Kinetic Modeling Approach (EKMA), which is less costly to run than UAM.

The UAM has greater potential than EKMA for evaluating the details of ozone control strategies, primarily because this model considers meteorology in greater detail and can relate emissions directly to ambient ozone concentrations. This model can take into account wind fields, dispersion, and relative position of sources in addition to atmospheric chemistry.

At a minimum, all areas must use a model with the accuracy of the city-specific EKMA. The inability of simpler models to account adequately for chemical kinetics and meteorological processes reduces their ability to represent local conditions accurately. Accordingly, EPA will not approve plans based on attainment demonstrations that rely on linear or proportional rollback techniques. Also, EPA proposes not to allow States to rely on the wind trajectory analysis, known previously as Level II, because of the poor performance of that approach in the past. The EPA has revised its guidance to be more explicit with regard to the use of wind data in EKMA. The EPA is also issuing new guidance which includes updated methods for estimating future ozone, nonmethane organic compound, and nitrogen oxide transport levels for use in EKMA. These changes should result in less optimistic assumptions concerning reductions of transported ozone than provided under the previous guidance.

Use of a model other than EKMA or Urban Airshed must be approved by EPA prior to a commitment by the State to its use. Since the UAM requires more time and resources than EKMA, EPA does not expect many areas initially to choose the UAM approach. Those areas expecting to perform Urban Airshed modeling should be aware that EPA will not allow States to delay the initial submittal of attainment demonstrations just because of time or resource complications resulting from the use of this model. (However, an area may update its attainment demonstration in subsequent years with more accurate or complete information.) Areas expecting to perform Urban Airshed modeling should begin early to acquire the necessary data bases so that the demonstration can be submitted on time.

2. *Carbon Monoxide.* The EPA presumes that most CO problems, especially those of a long-term nature, are not merely a collection of "hotspots," but are either areawide (needing areawide control measures) or are caused primarily by an underlying areawide problem. In particular, EPA believes that larger metropolitan areas with high volumes of traffic, high traffic densities, or many closely-spaced congested intersections will typically have an areawide problem, even though isolated hotspots may also contribute to violations in such areas. In contrast, EPA believes that true "hotspots" lacking any significant areawide contribution are generally characterized by a limited number of isolated points of traffic congestion (i.e., widely-spaced congested intersections, high-volume traffic generators such as shopping centers, etc.) found typically in areas with relatively low population. In these areas, removal of the cause of congestion would, by itself, eliminate the CO violation at the hotspot. Given the absence of an areawide contribution, solutions for such hotspots generally should not involve long-term measures, since short-term, localized measures are typically available. The EPA believes that States can solve such CO hotspot problems with the application of short-term measures (within 3 years of the date EPA approved the SIP).

The choice of models depends on classification of the problem as either areawide or hotspot, or both. If, after using the above criteria, the State believes that a problem should preliminarily be characterized as a hotspot (or small collection of hotspots) without an areawide problem, it should first define an area around the hotspot which contains sources contributing emissions seen by the hotspot monitor (or the model receptor if a hotspot modeling analysis was used). Then, other likely hotspots in the remaining portions of the county should be analyzed through monitoring and modeling to confirm whether they are indeed hotspots. Due to the localized nature of hotspots, EPA believes that hotspot control measures (e.g., traffic flow improvements, intersection or corridor modifications, etc.) can be implemented in the short term (i.e., not later than 3 years after EPA approved the SIP). Hotspot problems requiring longer time periods for correction will

be presumed to require areawide measures (e.g., enhanced I/M, VMT reduction measures). Where both short-term hotspot controls and areawide controls are applied, the State should perform both hotspot and areawide modeling. The detailed requirements for performing the necessary modeling analyses appear in the proposed Policy Statement and associated guidance.

B. *Data Requirements*—1. *Ozone*—a. *Geographic Area for Emission Inventory.* The EPA believes that the geographic scope of the demonstration areas used in the past has been either too narrow or inconsistent from State to State. To remedy this situation, EPA proposes, in most cases, to standardize the demonstration area for all emission sources as, at a minimum, the boundary of the MSA or the CMSA (if one exists). The detailed requirements relating to emission inventories in these areas appear in the proposed Policy Statement and associated guidance.

The EPA also believes that major sources of VOC's, CO, and NO_x (greater than or equal to 100 tons per year potential to emit[23]) outside but near the MSA/CMSA boundary may contribute to exceedances of the NAAQS in the SIP call area. For this reason, EPA proposes to require that States include emissions from such major stationary sources located within 25 miles[24] of the MSA/CMSA boundary in the demonstration area inventory, even if the 25-mile distance extends into another State or MSA/CMSA.

Where the 25-mile band for two MSA's receiving SIP calls would overlap, it would be appropriate for the two metropolitan areas to include the same sources in their baseline inventories. In other cases, sources may be within 25 miles of more than one MSA/CMSA. These results are not inconsistent with the goal of broadening planning boundaries, because large sources may contribute to ozone concentrations in one MSA on one day and a different MSA on another day. In those instances where a major source is within 25 miles of an MSA/CMSA but resides in an adjacent State, EPA intends to rely on the thrust of section 110(a)(2)(E) of the Act to call on adjacent States to provide such information to neighboring States. If necessary, EPA may issue SIP calls to States failing to provide the required data.

If monitoring sites which exceed the ozone NAAQS are located in non-MSA counties adjacent to an MSA/CMSA, EPA will presume that such counties should be treated as extensions of the MSA/CMSA for planning purposes. Such adjacent non-MSA counties should inventory sources as if they were part of the defined MSA/CMSA, except that the 25-mile planning guideline does not apply. For isolated non-MSA's (i.e., rural areas not adjacent to an MSA), the baseline inventory should include at a minimum all sources within the county containing the site which exceeds the NAAQS.

b. *Air Quality Data.* Data requirements for ozone modeling are set forth in the proposed Policy Statement near the end of today's notice. A discussion of these data requirements, as well as ozone modeling procedures, is contained in Appendix I, "Modeling Procedures and Data Base Requirements to Support Post-1987 Ozone Policy." These requirements and procedures are intended to replace those published in the November 14, 1979, Federal Register (44 FR 65667) "Data Collection for 1982 Ozone SIP's."

2. *Carbon Monoxide.* Depending on the modeling requirements, the geographic coverage of the CO inventory may be as broad as the MSA/CMSA or as limited as a central business district (CBD) traffic corridor or other demonstrated hotspot problem. The EPA proposes to require that cities with areawide CO problems include within their emissions inventory at a minimum all sources within the MSA/CMSA. Areas that can demonstrate (using the procedure in section III.A) that their CO problem is limited to a few hotspots in the CBD and that the solutions to those hotspot problems lie in solely short-term, localized control measures rather than areawide measures may limit the geographic coverage of their inventories as appropriate, with approval of the appropriate EPA Regional Office.

C. *Requirements for Emission Baselines and Projections*—1. *Baselines.* Base year emissions must represent emissions which contributed to ozone exceedances during the 3- or 4-year period of air quality data used in the modeling. Therefore, it must represent typical ozone season weekday emission levels which existed during that period. Where possible, baseline inventories should be prepared for a 1987 base year. Base year emissions must reflect actual conditions, defined as the estimated typical emission factor (emissions per unit of production) multiplied by the typical weekday production rate and hours of operation.

If emissions changed significantly from one year to the next, during the 3- or 4-year period of air quality data used in the modeling, it may be necessary to select more than 1 year's emissions as representative of the base period. In this case, attainment emissions levels should be calculated by applying the modeled percent reduction for each year of air quality data in the base period to the corresponding year's emissions. Then, the overall attainment emissions level is the fourth highest[25] of these levels as opposed to the fourth highest percent reduction if a single base year inventory is used. (Current practice allows modeling only the years after the emissions changed, thus excluding the previous data from consideration. The EPA proposes not to allow this practice in the future.

Base year inventories for ozone in the entire MSA/CMSA as well as non-MSA counties that are adjacent to an MSA and exceeding the NAAQS shall individually list all VOC sources with a potential to emit at least 10 tons per year and CO and NO_x sources with a potential to emit at least 100 tons per year. Sources with emissions below these amounts may be aggregated by source category. For the 25-mile band around the MSA/CMSA, VOC, CO and NO_x sources with a potential to emit at least 100 tons per year shall be listed individually. Base year inventories for sources affected by existing regulations must also reflect appropriate effectiveness levels, as described below.

2. *Credit for Rule Effectiveness*—a. *Ozone.* The EPA believes that one reason ozone levels have not declined as much as expected is that reductions from national and local control measures have not been as high as expected. Past SIP's have assumed that implemented rules would be fully effective in practice, and would achieve all of the required or planned emission reductions. Based on past experience, however, EPA now does not believe that rules are fully effective across all sources, all source categories, and over time. Limited studies in California indicate that the effectiveness (i.e., the ratio of actual reductions to expected reductions expressed as a percentage) of some rules, is much lower than 100 percent.

Section 110(a)(2)(B) of the Act requires that SIP's include measures "as necessary to ensure attainment and

[23] As defined in 40 CFR 51.165(a).

[24] The 25-mile distance is based on the maximum distance downwind of urbanized areas recommended for location of ozone monitors (see Appendix I).

[25] Assuming 3 years of complete data. If fewer than 3 years of complete data exist, then the third or the second highest attainment level must be used.

maintenance" of the NAAQS. The EPA believes this provision requires that plans should attempt to provide a high degree of confidence that attainment will in fact be achieved through implementation of the adopted measures and commitments.

Elsewhere in this policy, under the section entitled "Maximizing Effectiveness," EPA is proposing to require States to assess existing rules and take appropriate corrective action, including SIP revisions to those rules, to improve their effectiveness. The EPA expects that States will meet these requirements and that the effectiveness of both existing and future rules will improve as a result.

The EPA does not believe, however, that it is appropriate to continue the past practice of assuming in the attainment demonstrations that either existing rules with future compliance dates or future rules will be fully effective, unless such effectiveness has been adequately demonstrated. Therefore, for both new and existing rules, EPA proposes to allow States to assume not more than 80 percent of full effectiveness unless higher levels are adequately demonstrated, as described in the policy. The EPA recognizes that, to date, States have performed few rule-effectiveness evaluations quantifying the amount of reduction actually achieved from various rules. The EPA also recognizes that an assumed effectiveness percentage cannot fully represent the effectiveness of all rules and all source categories in all cities. Yet, EPA believes it is important to establish a consistent planning guideline for use until sufficient data become available to justify a different effectiveness lavel. The assumption of 80 percent effectiveness represents EPA's judgment that most rules are not achieving the full credit which has been assumed in previous SIP's, but that a combination of improved auditing and enforcement (see section VI of the policy) should produce a relatively high level of effectiveness, perhaps comparable to full compliance in at least four out of five sources. However, because some rules may in practice achieve less than 80 percent, EPA expects States to implement the requirements for improving the effectiveness of existing rules, as described in this proposal under "Maximizing Effectiveness of Existing Program," (see section VI) including any programs for futura corrective actions. The EPA anticipates that implementation of these requirements will also improve the effectiveness of future rules, due to improved enforcement and training, and elimination of ambiguities and deviations from EPA policy.

The EPA expects that reductions will be achieved as a result of corrective actions from rule effectiveness evaluations. However, since neither the amount of this reduction nor the effectiveness level of the rule will be known, EPA will not allow States to assume in their base year inventory that existing control measures are more than 80 percent effective prior to the evaluation. If evaluations have been performed for existing sources, the base year inventories of such sources must reflect the effectiveness level determined by the evaluation. Additional requirements for determining effectiveness credit for new and existing rules appear in the proposed Policy Statement near the end of today's notice.

b. *Carbon Monoxide.* As for ozone, EPA will allow States to assume effectiveness levels of more the 80 percent in their CO SIP's only if supported by evaluations meeting EPA criteria. Requirements for determining effectiveness credit for I/M programs and transportation control measures (TCM's) appear in the proposed Policy Statement and in associated guidance.

3. *Projections.* The demonstration must project all emission reductions occurring by, or in, the year in which attainment is projected to occur. If attainment is projected to occur more than 3 years from the base year, the demonstration must project reductions occurring within every intervening 3-year period prior to attainment for all sources in the inventory. Areas subject to requirements for interim progress [e.g., to avoid discretionary sanctions or to obtain a 2-year extension under section 110(e)] must make the first interim projection for 5 years (rather than 3 years) after the base year. These areas should then make 3-year interim emission reduction projections starting from the initial 5-year projection and extending to the attainment date.

Additional requirements for projecting emissions appear in the proposed Policy Statement.

IV. Requirement for Development of Control Strategy

Introduction. Once the State has determined the percent reduction needed to attain the NAAQS and the associated necessary reduction in baseline emissions, it must identify control measures that will meet this requirement, and will result in attainment as expeditiously as practicable and by a date certain. Implementation of existing and proposed national measures by EPA and affected industries will aid States in meeting the control targets. In the past, due to the imprecision inherent in control targets for ozone, EPA has required minimum reasonably available levels of control on certain types of VOC sources. This policy does not alter those requirements. The EPA proposes to require that any of these requirements which may not have already been implemented, be implemented expeditiously but not later than the end of 1992.

Beyond the national measures and the required State measures, EPA is proposing to require minimum rates of locally prescribed emission reductions for all areas except those with a truly marginal nonattainment problem. Areas subject to this progress requirement cannot rely on the Federal measures or any previously required State measure in determining compliance with the minimum rate of progress.

Areas that can demonstrate attainment in the short term will be required to demonstrate maintenance for up to 10 years from the SIP due date.

A. *Federally-Implemented Measures, Federally-Prescribed Measures, and Technical Support.* To assist States in achieving the required emission reductions, EPA is evaluating the need for additional Federal support on emission control technology. Four levels of support that could be provided are listed below:

—Federally-implemented measures (e.g., Federal regulation of gasoline refueling emissions, regulations for hazardous waste treatment, storage, and disposal facilities)
—Federally-prescribed measures for stationary sources (e.g., CTG documents that contain presumptive levels of RACT)
—Alternative control technology documents for stationary sources (containing technical information but no presumptive RACT)
—Direct technical assistance to States on stationary source control

While the potential exists for significant additional control of stationary sources, there are some major VOC sources for which effective State regulatory action is difficult without Federal Leadership on control technology. Federally implemented or prescribed measures may be appropriate where there is a large amount of VOC emissions on a national scale, and a Federal standard clearly dominates locally derived standards, or where a lack of national uniformity could lead to serious competitive problems affecting

interstate commerce, or create other adverse economic impacts. In addition, EPA would provide technical support where technical or institutional barriers make it difficult for individual States to deal with an industry in a perceived fashion.

The EPA solicits comments on the need for additional Federal support, the criteria for selecting which level of support is appropriate, and the source categories that should be included in each level. The EPA is also interested in comment on what forms of technical support are most desirable. Some source categories that may be candidates for additional Federal support are listed in Table C–1 of Appendix C. Additional discussion of the four levels of Federal support is contained in the following section.

1. *Federally-Implemented Measures.* The EPA believes that some categories of emissions should be controlled through regulations adopted at the national level. The EPA's current or planned regulations for these emission categories are described below. These measures will reduce emissions in areas that are experiencing ozone or CO violations.

a. *Regulation of Evaporative Emissions from Fuels.* Evaporative VOC emissions from gasoline-fueled vehicles occur when gasoline vapors expand in the fuel tank and when residual engine heat causes evaporation of fuel remaining in the carburetor and fuel lines. These emissions are dependent on the volatility, measured in part as the Reid Vapor Pressure (RVP), of the fuels involved. The EPA issued a comprehensive technical study in November 1985 of various alternatives for controlling evaporative emissions and has reviewed comments on that study.

Among other things, the study shows that the volatility of fuels in use has edged significantly higher than the volatility of fuels used during vehicle certification under EPA's Title II regulations. As a consequence, evaporative emissions from vehicles operating on commercial fuels are well above EPA's certification standards.

To address this problem, EPA is considering limits on volatility of in-use fuels in order to reduce evaporative VOC emissions. The EPA has published a notice of proposed rulemaking and is soliciting comment on all relevant issues, including the technical feasibility and cost of its proposal and alternative control methods [see 52 FR 31274 (August 19, 1987)].[26]

b. *Refueling Emissions.* Ozone attainment demonstrations that States have submitted in the past reveal that emissions from the refueling of motor vehicles at service stations account for a significant fraction of VOC emissions inventories. The EPA recently proposed regulations to achieve the control of emissions from vehicle refueling through the use of "on-board" control technology (see 52 FR 31162, August 19, 1987).

Twelve local areas in California, as well as the District of Columbia, have already implemented regulations to achieve the reduction of refueling emissions through the use of alternative means, namely, equipment at service stations that capture the vapor during vehicle refueling (Stage 11 vapor recovery). The State of Missouri has already begun to implement a Stage II program for the St. Louis area, and projects that it would result in a sizeable reduction (about 3 percent) in the area's emissions inventory. Also, both New York and New Jersey included in their approved ozone SIP's, legally enforceable commitments to adopt a Stage II program.

In its recent regulatory proposal concerning onboard controls, EPA stated that it is considering onboard vehicle control as the preferred national strategy to limit motor vehicle refueling emissions. It should be noted that choosing a refueling control strategy presents an unusual issue in that one control measure (Stage II) could be employed and eventually replaced by a more effective alternative (onboard).

The EPA is soliciting comments on all relevant issues involving technical feasibility and the cost of alternative control methods.

Pursuant to section 202(a)(6) of the Act, EPA must consult with the Secretary of Transportation with respect to motor vehicle safety before promulgating a requirement for onboard technology. Because of the statutory significance attached to this consultation, EPA will reopen the record on that rulemaking (onboard) when the EPA receives comments from the Secretary of Transportation and will repropose the rule to assess changed circumstances.

The EPA believes that the decision as to whether States must implement Stage II controls for the interim period before onboard controls become fully effective should depend on the extent to which States have already planned for and implemented Stage II. Accordingly, in areas where Stage II has already been installed, or is in the process of being installed, the State must continue to install and use these systems while onboard controls are phased in. In these circumstances, the continued use of existing Stage II would provide interim environmental benefits at a reasonable additional cost. Such areas could, however, phase out these systems as onboard is phased in. Such changes, of course, would need to be incorporated in revisions to the applicable SIP. Areas that have not begun implementation of Stage II controls, but whose SIP's contain commitments to do so, should proceed with implementation since those areas and EPA have already relied on those reductions to produce progress toward eventual attainment. In other nonattainment areas, interim Stage II controls would remain a control measure that States could consider including as a part of the area's overall ozone attainment strategy, as discussed in section IV.B.

c. *New Standards for Hydrocarbon Emissions From Light-Duty Trucks.* The EPA recently published an advance notice informing the public that EPA is contemplating various new rulemakings related to motor vehicle emissions standards and regulations [see 51 FR 32032 (September 8, 1986)]. The EPA stated in that notice that it is evaluating, among other things, more stringent hydrocarbon exhaust emission standards for light-duty trucks generally and for light- and heavy-duty trucks at higher altitudes. Reducing hydrocarbon emissions from these vehicles could contribute significantly to reductions in ozone concentrations in nonattainment areas.

d. *FMVCP.* The FMVCP consists of a set of measures carried out at the national level that are intended to assure that mobile sources are designed and durably built in accordance with the emission reduction goals set out in the Act.

Prior to production, prototype vehicles are tested over a 50,000-mile cycle, and manufacturers receive a certificate of conformity with emission standards. Vehicles are also randomly sampled from assembly lines to assure that the manufacturing process conforms with design specifications. Finally, there are provisions for recalling classes of vehicles with common defects, and

[26] The EPA is aware that several northeastern States are examining whether to adopt regulations limiting the volatility of fuels used within those States prior to any final action by EPA to control fuel volatility. While the Agency generally encourages States with persistent nonattainment problems to consider all possible means to bring about attainment, the selection of measures affecting fuel content may, under section 211(c)(4) of the Act, require an analysis of such issues as whether the State action has been preempted by Federal action and, if so, whether the State action is necessary to attain the relevant standard. The EPA intends to address these issues in future **Federal Register** notices.

warranty protection for individual vehicle owners where emission controls fail within a vehicle's useful life.

The FMVCP will continue to provide additional VOC and CO reductions in the near term, as the vehicle fleet turns over. The EPA will continue to provide guidance on how States should calculate the emission reductions to be achieved by the FMVCP over the next several years so that States may rely on these reductions in their attainment demonstrations.

e. *Hazardous Waste TSDF.* The EPA is investigating the magnitude of area source (noncombustion) emissions from hazardous waste treatment, storage, and disposal facilities (TSDF) [Facilities permitted under subtitle C of the Resource Conservation and Recovery Act (RCRA)]. Where warranted, air regulations will be issued under the RCRA or the Clean Air Act. There are seven potential air emission sources at TSDF: surface impoundments, landfills, wastewater treatment tanks, waste piles, land treatment, pretreatment facilities, and transfer operations. Pollutants being considered include VOC, particulate matter, and a range of specific toxic substances. Preliminary analysis indicates that TSDF air emissions are sufficient to warrant regulation and that emissions of VOC are particularly significant.

The TSDF rules are being developed in different stages. On February 5, 1987 (52 FR 3748), a rule was proposed covering VOC and toxic emissions from waste solvent treatment facilities and fugitive emissions from equipment leaks. This proposed rule was developed in concert with the land ban rules being developed under RCRA. The proposed rule addresses some new sources of air pollution that are expected as industry develops new traatment technologies in response to the land ban rule. The next stage of regulation will be the comprehensive rules covering all seven types of area sources in TSDF. These rules are currently under development.

f. *Municipal Landfills.* Uncontrolled municipal landfills emit VOC and toxic pollutants due to migration to the surface of organics contained in the waste or generated during the decay process. Current control techniques consist of underground organic collection and combustion systems. The EPA is currently exploring regulatory options under the Act for controlling these emissions.

g. *Additional National Measures.* The EPA will evaluate additional potential national measures to be federally implemented and will consider whether to commence rulemaking to implement them. Such measures could include regulations to control emissions from certain consumer products. Such consumer products may be appropriate areas for national regulation since they are marketed across State lines and are pervasive throughout society, so that it may be difficult for a local area to regulate them without interfering with interstate commerce. National regulation of manufacture or distribution may be more practical than local control for such products. National regulations in this area could be advantageous to industry also, since nationwide distributors of products would have to deal with a much smaller number of regulations applying to their products than if each local area were to adopt its own regulations. The EPA solicits comment on whether it should pursue such regulations and whether EPA has sufficient authority (e.g., under section 301 of the Clean Air Act or other statutes) to promulgate them.

2. *Federally Prescribed Measures.* Numerous control measures have been federally prescribed and adopted as part of previous EPA-approved SIP revisions. Continuing current policy, the EPA requires that these measures remain in effect while the area is violating the NAAQS and until such time as the measures are modified in accordance with established SIP revision procedures. This requirement also applies to previous regulations not specifically required under today's proposed policy, for example, where pre-1987 rural nonattainment areas were required to implement Group I and II CTG's for major sources, but which are now adjacent non-MSA's and have no new control requirements. In particular, EPA believes that nonattaining areas in the Northeast "corridor" should maintain previously adopted and EPA-approved regulations since many areas in this region could eventually need to employ minimum or additional control measures to solve the Northeast transport problem.

a. *Stationary Source Measures.* Because of the relative imprecision of such ozone databases and modeling techniques as city-specific EKMA, EPA historically has required most areas to include in their control strategies certain stationary source control measures that EPA believes are reasonably available, and necessary to ensure that the SIP "provides for" attainment of the ozone standard as expeditiously as practicable. See section 110(a)(2) (A) and (B) and section 172(a). The EPA proposes to continue this requirement.

In the past, the volume of minimum control requirements that EPA has thought necessary to assure attainment in an area has turned on whether the area is urban or rural. Consistent with today's proposal to require new attainment demonstrations for self-generating rural areas, EPA intends to apply to such areas certain minimum control requirements applicable already to urban areas. Nonself-generating rural areas would remain subject only to a subset of those requirements. These different sets of measures are described below.

i. *Urban Areas and Self-generating Rural Areas.* In EPA's guidance of April 11, 1979 (44 FR 20372), EPA required all urban ozone nonattainment areas to include in their Part D SIP's regulations to apply RACT to sources falling into the categories covered by the first two sets of CTG's that were issued at the time.

In EPA's January 1981 guidance on the requirements for extension area plans, EPA required extension areas to supplement the first two sets of RACT rules with RACT rules for the categories covered by the third set of CTG's as well as for sources with the potential to emit 100 tons per year or more uncontrolled but not falling within any CTG category. In EPA's January 1984 guidance, EPA extended these requirements for extension areas to certain nonextension areas receiving SIP calls. This policy will not alter these requirements. If not already implemented, these measures should be implemented expeditiously, but not later than the end of 1992. The 1992 date would provide for the most complex cases to develop and adopt regulations within a year and would provide up to 3 years for compliance with the regulations. However, in many cases, EPA expects implementation of these regulations within a shorter period of time to be feasible.

The EPA now proposes to require all urban areas receiving post-1987 SIP calls for ozone, whether they are extension or nonextension areas for purposes of Part D planning, to adopt RACT rules for all of the CTG categories.[27] This

[27] If a State-uses photochemical dispersion modeling (Urban Airshed) to show that attainment may be reached within 3 years after EPA's approval of the required SIP without employment of all of these measures, then these minimum requirements would not apply and the State could use any mix of measures necessary to demonstrate timely attainment. A State's desire to use a photochemical dispersion model, however, would not be sufficient reason to delay its submittal of a SIP meeting the requirements of this policy. Absent a timely submittal of an Urban Airshed modeling analysis showing that the control measures described are unnecessary, EPA will presume that they are necessary. Thus, a State contemplating the use of such a model should account for the extra time required for such an analysis by commencing its analysis as early as possible.

requirement will apply as follows: for areas currently designated as nonattainment, and areas redesignated to attainment but measuring violations of the ozone standard, the requirements will apply in the section 107-designated (or previously designated) area or the control area included in the previously approved Part D SIP, if applicable; [28] for newly found nonattainment areas those requirements will apply to the "central" county(ies). This change will add needed certainty to the attainment demonstrations for some areas and reduce the disparity in minimum stationary source controls that resulted from the historical classification of urban areas as extension or nonextension.

The EPA also proposes to require that areas that are classified as self-generating rural nonattainment areas be subject to the same minimum requirements for stationary source control (i.e., adoption of RACT for all Group I, II, and III CTG sources) as urban areas. Previous policy required all rural areas to apply RACT only on sources with the potential to emit 100 tons per year or more and falling within the Group I and II CTG source categories, on the assumption that few if any rural areas were self-generators of ozone. Extension of urban area requirements to self-generating rural areas is appropriate because it is likely that such rural areas would have been subject to pre-1987 urban requirements if they had been found to be self-generating prior to this policy.

Continuing a long standing requirement for adoption of new control measures, the post-1987 policy will require nonattainment areas subject to this policy, except truly marginal nonattainment areas [29] and isolated rural nonself-generating areas, to adopt an appropriate enforceable regulation for each source category covered by any new CTG. The EPA is proposing to exclude truly marginal nonattainment areas from this requirement on the grounds that reductions from federally-implemented measures, pre-1987 requirements (such as Group I, II, and III CTG's) and enhanced effectiveness of pre-1987 requirements, are likely to produce near-term attainment in these areas and it is unlikely that new CTG's could be adopted and implemented in sufficient time to advance the attainment date. However, EPA will require such marginal areas to include in their SIP's a commitment that, if attainment is not achieved by the projected date, they will adopt new CTG's (including any new CTG's issued since today's proposal). The regulation must apply as follows: for areas currently designated as nonattainment, and for areas redesignated to attainment but measuring violations of the ozone standard, the regulations must be adopted for the section 107-designated (or previously designated) area or the control area included in the previously approved Part D SIP, if applicable; for newly found nonattainment areas, these regulations must apply to the "central" county(ies) as defined by the Bureau of the Census. Satisfaction of these requirements requires adoption by each subsequent January of additional regulations for sources covered by CTG's issued by the previous January.

ii. *Nonself-Generating Rural Areas.* The EPA does not intend to require nonself-generating rural nonattainment areas to adopt Group III CTG stationary source requirements, but EPA will continue to apply existing requirements to these areas. As indicated in the guidance EPA issued on May 19, 1978 (43 FR 21673) and April 4, 1979 (44 FR 20372), and in subsequent rulemakings, EPA required the SIP's for these areas to contain RACT regulations only for major (potential to emit 100 tpy or more) sources covered by the first two sets of CTG's, and new source review requirements other than the requirement for case-by-case offsets. The policy proposed today continues to apply that guidance.

As indicated earlier, EPA continues to believe that the ozone problems suffered by these areas are attributable primarily to emissions from upwind areas. The EPA believes, however, that even though these areas may not contribute significantly to their own ozone concentrations, they may cumulatively generate sufficient VOC emissions to contribute significantly to ozone concentrations in downwind areas. The EPA believes that the above requirements will adequately minimize the transport of VOC's to downwind areas and, as mentioned earlier, provide an adequate margin for growth that would obviate the need for case-by-case offsets.

b. *Enhanced I/M.*[30]

The EPA has considered the potential for greater VOC and CO reductions from vehicle inspection and maintenance programs, and believes that a substantial enhancement of reductions beyond what the basic existing program will achieve is available for areas with relatively serious ozone or CO nonattainment problems. The EPA is considering a variety of alternative approaches with respect to enhanced I/M. One option would be not to establish a specific enhanced I/M requirement, but instead, to allow States to consider the benefits available from enhanced I/M, along with those from other available control measures, in deciding how to meet the 3 percent average annual reduction requirement described in later sections of this policy. There are advantages to this approach. By allowing States to balance the benefits of an enhancad I/M program along with other available control measures instead of mandating a national enhanced I/M requirement, States may be better able to tailor their control programs to meet the 3 percent annual reduction requirement. The EPA is soliciting comment on this option, and whether the 3 percent annual reduction requirement obviates the need for a separate enhanced I/M requirement in the post-1987 nonattainment area policy.

Another possible approach, and the way EPA is presently leaning, is to establish a specific enhanced I/M requirement for areas with relatively serious ozone or CO nonattainment problems. If EPA decides to establish a separate enhanced I/M requirement, EPA would also make it applicable to all urbanized areas with a design value,[31] based on 1985–1987 data, at or above 0.16 ppm for ozone or 17 ppm for CO. The EPA doubts that areas with ozone or CO design values equivalent to or above the stated values will be able to

[28] In the situation in which the area was previously classified as a rural nonattainment area under the old policy but is classified as urban (MSA) under today's proposal, the minimum area for control will be the central county in the MSA. However, RACT requirements applicable to the previous control area would continue to apply unless modified through appropriate SIP revision procedures.

[29] As defined in Section IV.B., truly marginal nonattainment areas are those with design values below 0.16 ppm ozone (0.155 ppm where data are reported to three decimal places) or 17 ppm CO and able to demonstrate attainment in the short term by relying only on emission reductions from (1) federally-implemented measures, (2) measures required for the area in EPA's pre-1987 guidance, and (3) other measures adopted by the State and approved by EPA on or before publication of today's proposal.

[30] EPA is considering a variety of options regarding enhanced I/M, including establishing a specific enhanced I/M performance level for some nonattainment areas as well as relying on the 3 percent reduction requirement to force consideration of enhanced I/M. At other places in this document, the distinction between these options may not always be expressed, but is intended throughout this policy.

[31] For determining areas subject to this requirement, and other requirements employing these "cutpoints," EPA will use the rounding convention that values ending in 5 through 9 round up, and values ending in 1 through 4 round down. Hence, an ozone design value of 0.155 ppm becomes 0.16 ppm and a CO design value of 16.5 ppm becomes 17 ppm.

demonstrate persuasively that they will attain in the near term.

The EPA, therefore, is considering whether to require such areas to implement changes to raise the performance level (that is, the VOC and/or CO reduction effectiveness) of their I/M programs well above that of the basic I/M requirement. Consistent with existing EPA policy, a new I/M requirement, if adopted, would not apply to urbanized areas, as defined by the U.S. Census Bureau,[32] with a population below 200,000.

In EPA's view, enhanced I/M may be a minimum indicator of "reasonable efforts" for Part D areas within the meaning of section 176(a)(3), and therefore could be part of EPA's consideration of whether to implement other discretionary sanctions after 1987. In areas which will be able to persuasively demonstrate attainment of the standards within the 3-year period, EPA believes that local flexibility is important and does not plan to include them under an enhanced I/M requirement, if adopted.

One reason for considering a separate enhanced I/M requirement is that the sooner areas have some certainty that enhanced I/M is required, the more expeditiously they can accomplish its implementation. Establishing a design value cutoff for the requirement, although admittedly imprecise, could eliminate the loss of time associated with modeling and with alternative strategy evaluation. The EPA is requesting comment on both the approach and on the appropriateness of the design value levels being proposed if a separate enhanced I/M requirement is adopted. The remainder of this section discusses various aspects of and issues related to a separate enhanced I/M requirement if adopted. In several places, specific issues are identified on which EPA is soliciting comments.

Possible enhancements to I/M programs for greater VOC and CO reductions fall into four categories. First, operating losses due to improper inspections, incomplete enforcement, or lenient repair waiver systems can be reduced. Some affected areas may have already taken steps to do so. Second, additional vehicles which are presently exempt based on age, type, or owner residence can be subject to the inspection requirement. Third, the emission test portion of the periodic inspection can be made more sophisticated or the pass/fail limits or cutpoints more stringent. Fourth, important emission control components can be checked visually, or by other means that do not involve emissions measurement, for evidence of tampering or misfueling. Some of the major components that could form the basis for an enhanced I/M program include: (1) Adding older vehicles (back to 1968) to the program, (2) increasing program stringency up to 35 percent, (3) changing from idle test to two-speed or loaded-mode tests, (4) adding catalyst and filler-inlet inspections, and (5) adding complete anti-tampering programs.

Rather than require States to adopt specific enhancements from any of the specific categories above, EPA would define the enhanced I/M requirement, if adopted, in terms of a numerical performance level which may be achieved by a combination of program elements. The EPA is considering a performance level at roughly equivalent to the design level of the third most stringent of the 27 or so distinct I/M programs now planned or in operation in ozone nonattainment areas. By preliminary EPA estimates, this level will correspond to about 35 percent more VOC reduction than the median of those 27 designs, and 150 percent more than the least stringent of them. For CO, this level corresponds to about 20 percent more reduction than the median design and 180 percent more than the least stringent.

In choosing a performance level for enhanced I/M, EPA believes it is important to maximize the emissions reductions that can be achieved while minimizing the costs of control and preserving as much as possible the States' flexibility in designing programs that will meet their needs and desires. As discussed in Appendix E, the performance level discussed above corresponds to an average annual reduction of 5700 tons of VOC per million vehicles in the areawide fleet. This level would provide a significant additional increment of emissions reduction and allow the States to choose among major program design options, such as, biennial versus annual inspection frequency and decentralized versus centralized format.

There are a number of other options at higher or lower performance levels which EPA could also select for an enhanced I/M performance level. For instance, EPA could select the most stringent current program, which would provide an even larger incremental reduction. The most stringent program would provide annual VOC reductions of 7200 tons; however, it would force most States to choose a centralized, annual program with strict tailpipe I/M and strict anti-tampering checks. On the other hand, EPA could choose a lower performance level, for example, one equivalent to the fifteenth most stringent program. This performance level would provide a lower incremental emission reduction, since it would provide an average annual VOC reduction of about 4500 tons. However, it would provide States even more flexibility in designing their programs. This lower level could be met by having an intensive tailpipe I/M program alone or by various combinations of tailpipe I/M and anti-tampering checks.

Because of the wide range of enhanced I/M performance levels that EPA could choose, EPA is soliciting comment on the appropriateness of alternative performance levels being considered for an enhanced I/M requirement. The EPA also intends, in making a final decision, to make a full study of the likely costs of alternative I/M programs.

The EPA has previously required that the minimum emission reduction level be achieved in the urbanized area as defined by the U.S. Census Bureau. Areas which extended their I/M program boundaries beyond the urbanized area were permitted to "bubble" the reductions from the additional vehicles and to reduce the overall stringency of the program. In some cases, this bubble has allowed programs to suffer significant operating losses while avoiding a call for a corrective plan.

For an enhanced I/M requirement, if adopted, EPA is planning to retain the U.S. Census Bureau's defined urbanized area as the base for geographic coverage. The EPA is considering, however, not to allow emission reductions obtained from vehicles outside the urbanized area but within the MSA/CMSA to count toward meeting an enhanced I/M performance level, if adopted. This is because EPA believes that reductions obtained by expanding the enhanced I/M program outside the urbanized area would, therefore, most appropriately apply toward meeting the progress requirements for the MSA/CMSA (as described later in this notice) rather than toward weakening I/M requirements in the urbanized areas.

The EPA recognizes that the MSA/CMSA could also serve as a reasonable

[32] An "urbanized area" is an area defined by the Bureau of the Census according to specific criteria, designed to include the entire densely settled area around each city. An urbanized area must have a total population of at least 50,000. The urbanized area criteria defines a boundary based primarily on a population density of at least 1,000 persons per square mile, but also include some less densely settled areas within corporate limits and such areas as industrial parks, railroad yards, golf courses if they are adjacent to dense urban development.

basis for geographic coverage. Part of the definition of an MSA is that it encompasses the commuting area around an urban core. EPA is soliciting comment on whether an enhanced I/M requirement, if adopted, should be required in the entire MSA/CMSA.

Detailed guidance on an enhanced I/M requirement, if adopted, is included in Appendix E. This appendix states the specific numerical performance requirement being considered. It also contains instructions for estimating the VOC and CO emission reductions achievable from various combinations of program elements, i.e., a yardstick by which affected areas can compare their current I/M program and various enhancement alternatives to the new performance standard.

In addition to the new numerical performance standard, Appendix E describes certain other required I/M program features necessary to insure that adequate resources and management tools and practices are in place to assure that each enhanced I/M program contributes to attainment as fully as expected. These administrative requirements include strict criteria for cost waivers, measures to assure proper inspection in decentralized programs, and activities to improve repair effectiveness.

Appendix E also describes proposed requirements being considered for periodic self-evaluation and reporting for enhanced I/M programs. These requirements would allow EPA to identify programs which are not meeting the performance requirement due to shortcomings in implementation, and to propose nonimplementation sanctions in such areas.

The EPA is also soliciting comments on the questions listed below related to the enhanced I/M program requirement being considered:

—Should a lower population threshold than 200,000 in the urbanized area be used to exempt areas from requirements of I/M?
—Should the population of the entire MSA be counted toward meeting the 200,000 population cutoff for requiring enhanced I/M?
—Should thresholds be lower in transport areas where ozone levels are severely impacted by upwind sources?
—Should areas under 200,000 population which are upwind of a nonattainment area and are contributing to its long-term nonattainment also be required to implement enhanced I/M?

3. *Technical Support*—a. *Alternative Control Technology (ACT) Documents.* From time to time, it may be appropriate to publish documents that provide technical information about the control of individual source categories. The documents would identify the emission control technologies that are available for a particular source category along with information on process operation, control efficiency, costs, and other impacts of control. A State could use this information as the basis for an emission limit based on the control technology that is most appropriate given the local needs and circumstances. The ACT document would not specify a presumptive RACT nor a minimum level of control that would be required.

Source categories that are selected as candidates for ACT documents are those which may contribute to local nonattainment problems, but which may not warrant national measures. Some candidates might include batch processing vents from synthetic organic chemicals manufacturing, industrial wastewater processes, automobile refinishing, and web offset lithography. The EPA solicits comments on the need for ACT documents and source categories that should be addressed.

b. *Control Technology Center.* The Control Technology Center (CTC) is a program that can provide technical assistance to State and local agencies on individual problems that pertain to control technology and source testing. A hotline has been established to respond to requests for assistance and to provide a quick response to questions. Callers will be put in contact with EPA engineers who have the most knowledge about the topic in question. The CTC hotline provides access to available expertise in both the Office of Air and Radiation and the Office of Research and Development, whichever can best fulfill the needs when an individual request for assistance occurs. This service is available to all State and local agency staff. The CTC hotline number is (919) 541–0800.

In some cases, the information to satisfy a hotline request is not readily available from existing literature or staff expertise. When this occurs, the CTC may undertake original engineering analysis to satisfy the request. In determining when it is appropriate to perform such analysis, the CTC will consider the level of need and urgency to the State or local agency making the request, the ability of the CTC to provide a timely and useful response, cost, value of the product to other States, and availability of resources. This service is intended to augment the technical and analytical capabilities of the States for problems that cannot be handled by their resident expertise.

The CTC does not overlap any of the responsibilities of the EPA Regional Offices. The CTC is a mechanism for providing engineering assistance only. Questions that involve such topics as policy guidance or enforcement determinations should continue to be addressed to the appropriate EPA Regional Office.

B. *Requirements of Expeditious Attainment Dates and Reasonable Progress.* For the reasons described earlier in this notice, EPA proposes to approve only those post-1987 SIP revisions that demonstrate attainment of the ozone and CO standards within 3 years of the date of EPA's approval of the revisions [with a possible 2-year extension under section 110(e)]. Thus, EPA will impose the applicable construction ban in any designated nonattainment area lacking such a demonstration for the MSA/CMSA in which the area is located.[33] Areas that cannot demonstrate attainment within the 3- (or 5-) year period could also become subject to other sanctions if they fail to make reasonable efforts to submit a plan showing attainment by an attainment date suitable for the area and reasonable progress in the interim. The following discussion describes the requirements for progress and attainment dates for both long- and short-term nonattainment areas.

1. *Areas Demonstrating Attainment Within the 3-year Period.* As indicated above, the required attainment dates for post-1987 planning are keyed to the date EPA approves the SIP revision [see sections 110(a)(2)(A) and 110(e)]. For purposes of planning, EPA suggests that States developing plans to produce attainment in the short-term after 1987 assume that EPA's review and approval

[33] The restrictions in EPA's regulations implementing the construction ban "apply only to major stationary sources of emissions that cause or contribute to concentrations of the pollutant for which the nonattainment area was designated as nonattainment, and for which the SIP does not meet the requirements of Part D or is not being carried out in accordance with the requirements of Part D" [40 CFR 52.24(d)]. The EPA's current regulations imply that only emissions of VOC are considered ozone precursors for purposes of the construction ban [See 40 CFR 52.24 (e)(f)(4)(ii), and (f)(5)(ii)]. For this reason, for ozone nonattainment areas, the ban would apply to major new sources and major modifications of existing sources of only VOC.

The demonstrations required for areas with NMOC/NO_x ratios of greater than 10:1 may reveal that new emissions of NO_x would contribute significantly to ozone formation in some areas. The EPA solicits comment on whether it should initiate a rulemaking to amend the regulations described above to identify NO_x as an ozone precursor for purposes of the construction ban in such areas.

For CO nonattainment areas, the ban would apply to major new sources and major modifications of existing sources of CO.

of their plans will be complete within 1 year from the date the plans are due. This would mean that, to receive approval, the plans would have to demonstrate attainment within 4 years of the date the SIP is due [1 year for EPA approval plus the 3-year period in section 110(a)(2)(A)].

Consistent with section 110(a)(2)(A) and, for Part D areas, section 172, EPA will require the SIP's to demonstrate attainment as expeditiously as practicable, even if that date would arrive before the end of the 3-year period. The EPA will assume that short-term nonattainment areas that apply the applicable minimum control measures (no later than the end of 1992) described in the preceding section are employing all "practicable" measures. Thus, only if those measures, combined with the relevant federally implemented measures, would advance an area's projected attainment date from the 3-year date would EPA require the area's SIP revision to show attainment by that earlier date.

Plans for areas that are still subject to the Part D planning requirements must also, as required by section 172(b)(3), be adequate to produce RFP. This means that they must, as required by the definition of RFP in section 171(1), produce "annual incremental reductions" in emissions, including "substantial reductions in the early years following approval" of their plans, sufficient to provide for timely attainment. Plans for these areas should demonstrate that their control strategies will provide for attainment as expeditiously as practicable. Such demonstrations should show that earlier implementation of control measures would not significantly advance the attainment date.

The EPA's experience in the early 1980's indicates that, despite efforts to review in detail all aspects of the demonstration of attainment, there have been instances in which the control strategies were assessed overly optimistically as to their ability to produce large emission reductions over relatively short time periods. Of particular concern have been those plans which delayed most of their reductions until the final year(s) before the projected attainment dates so that it was difficult to determine the likelihood of attainment until late in the plan implementation process. Because of the requirement for SIP's to contain sufficient measures to assure expeditious attainment [section 110(a)(2)(A) and (B)] and EPA's belief that in order to assure such attainment the plan must show progress in the interim years, EPA is proposing to require all areas (including those with short-term demonstrations) to achieve their required emission reductions at a minimum rate unless the area truly has a marginal nonattainment problem.[34] The EPA proposes to define an area as truly marginal if it has a design value below 0.16 ppm ozone or 17 ppm CO and it can demonstrate attainment in the short-term by relying only on emission reductions from (1) federally implemented measures, (2) measures required for the area in EPA's pre-1987 guidance, and (3) other measures adopted by the State and approved by EPA on or before publication of today's proposal. In all other cases, the area must achieve an average annual emission reduction, of at least 3 percent of the adjusted base year (typically 1987) emissions inventory for the demonstration area, commencing the year of the SIP call. The use of an annual 3 percent emissions reduction rate is based primarily upon previously realized reductions achieved through the application of CTG controls in nonattainment areas. The EPA believes that a 3 percent annual reduction will provide for an expeditious rate of attainment while also providing for the implementation of control measures at a feasible rate. The EPA does, however, invite comment on whether the 3 percent annual rate of emissions reduction is the optimum rate considering the need to balance expeditious progress and reasonable efforts requirements.

Reductions not creditable towards the 3 percent are: (1) The federally implemented control measures, (2) measures required for the area in EPA's pre-1987 guidance, and (3) other measures adopted by the State and approved by EPA on or before today's proposal. For this purpose, the base year inventory would be adjusted by subtracting from it the emissions that would have been eliminated if the area had implemented all of the applicable requirements of both EPA's pre-1987 policies and the other approved portions of its SIP (as just described). (See Table 1 "Summary of Ozone and Carbon Monoxide SIP Requirements.") Reductions occurring in the period before the date the SIP is due, but after the base year will be creditable toward required reductions (i.e., they are creditable if they are not included in one of the three categories listed above). The EPA expects States to continue developing and implementing those scheduled measures that have been found appropriate from prior planning efforts. Such measures should be viewed as part of the foundation effort to start the post-1987 program and are creditable toward the 3 percent requirement only if they are not included in one of the three categories listed above.

States should develop their control strategies so that the minimum average annual 3 percent reduction starts as early as possible and occurs at a continuous rate until attainment is achieved. The EPA recognizes, however, that development and adoption of regulations often occur over irregular time periods and compliance efforts can require considerable time. In general, EPA believes that the earliest practical time to assess compliance with the 3 percent average annual requirement will be the fifth year from the SIP call: 2 years for SIP development and submittal and 3 years for source compliance. Therefore, the State's annual progress report (discussed in section V.A.1) for 1992 (due in 1993) must show that creditable emission reductions of at least 15 percent (5 years times 3 percent per year) of the base year inventory have been achieved. Stated differently, the report for 1992 must show an average reduction of 3 percent per year from 1988 to the end of 1992. For example, an area needing emission reductions of 17 percent (beyond the reductions from measures listed above for the "marginal test") would have to achieve reductions of 15 percent by the end of 1992 and the remainder thereafter at an average rate of 3 percent per year until attainment (i.e., achieve the remaining 2 percent by the end of 1993). An area needing additional reductions of, say, 7 percent would be required to achieve those reductions by the end of 1992. Because of the possible unique circumstances of an individual area, EPA is soliciting comment on the need for and ways to provide additional flexibility in implementing the 3 percent requirement. For example, certain localities might be allowed a different averaging time to achieve the requirement, depending upon such criteria as their emissions inventory mix.

The EPA believes that VOC control measures (such as those described in Appendix C) are available for application in these long-term areas to meet this requirement. Although this may prove to be a very ambitious goal in some areas, EPA's review of past ozone SIP's indicates that those SIP's have included measures that were capable of achieving average annual reductions in

[34] As stated above in section IV.A., any area with a design value at or above 0.16 ppm for ozone or 17 ppm for CO must also implement an enhanced I/M program.

past emissions inventories of 3 to 4 percent.

For example, the previous SIP's for ozone extension areas contained RACT measures for stationary sources which would produce emission reductions mostly in the range of 10–15 percent. Implementation of these measures generally occurred over a 3- to 4-year period, resulting in average annual emission reductions of about 3 or 4 percent.

By not allowing measures required by EPA's pre-1987 policies to count toward the 3 percent reduction, EPA believes that the disparity in the past control efforts of different areas will be reduced significantly. The following example will illustrate this effect. An extension area that was required to implement the basic I/M program required by section 172(b)(11)(B) of the Act before 1987, did not do so, and cannot after 1987 demonstrate attainment of the standard within the 3-year period, could not count toward the 3 percent reductions from the portion of any post-1987 I/M program that corresponds to a basic I/M program. It could, however, count toward the 3 percent requirement any reductions achieved by enhancements of the I/M program beyond the basic program. Thus, such an area would achieve no advantage from its failure to adopt the basic I/M program required before 1987. The EPA believes that it is appropriate to recognize in this way the various levels of past State efforts and progress in defining the efforts that would be reasonable for an area after 1987.

Emission reduction requirements will not be identical, however, from area to area, because ozone nonattainment areas faced different control requirements before 1987. For example, nonextension areas that never received SIP calls were not required before 1987 to adopt RACT rules for sources in the third category of CTG's, while nonextension areas that received SIP calls in 1984 or 1985 did face such a requirement under EPA's 1984 guidance on the correction of Part D SIP's. Hence, the former areas will be able to count the reductions from such RACT rules adopted after 1987 toward meeting the 3 percent requirement, while the latter areas will not. Similarly, nonextension areas that did not receive SIP calls in 1984 or 1985 were not required to adopt a basic I/M program, while nonextension areas that received such calls and could not demonstrate attainment by the end of 1987 were required by EPA's 1984 guidance to adopt such a program. Thus, only the former areas will be able to count toward the 3 percent reductions from a basic I/M program adopted after 1987. Table 1 sets forth the minimum control measures and percent requirements for each type of area.

In the above demonstrations of attainment, the areas must account for any growth in mobile or stationary source emissions expected to occur between the base year and the attainment date. So long as federally-implemented measures continue to achieve a net emissions reduction, considering growth in sources subject to those Federal measures, the State will not be required to account for such growth in meeting the 3 percent requirement. However, States must account for all other source growth during this period. If reductions due to turndowns in production (or source shutdowns) are used to demonstrate attainment, or are used to meet the 3 percent annual reduction requirement, they must be submitted as SIP revisions and must be federally enforceable.

The EPA also intends to require areas that can demonstrate near-term attainment to show that their plans will provide for maintenance of the standards well into the future despite the emissions growth projected to occur. Plans for these areas must project future emissions out to at least 10 years from the SIP due date and must contain commitments and schedules for any additional measures that may be needed to ensure maintenance of the standards. This requirement will also apply to any other area with a projected attainment date before the end of 1995.

Areas projecting near-term attainment must include in their SIP a commitment that, if they do not actually attain the standard by their projected attainment dates, they will meet the 3 percent average reduction requirement, and adopt new CTG's (including any new CTG's issued since today's proposal), and implement enhanced I/M (if required), starting when EPA finds that the area continues to violate the standard after its specified short-term attainment date. These areas will also be subject to whatever additional future requirements EPA ultimately finds are needed for long-term areas to provide for expeditious attainment.

2. *Areas that Cannot Demonstrate Attainment Within the 3-year Period.* As described above, areas subject to the construction ban because they cannot demonstrate attainment of the standards by the end of the 3-year period set forth in section 110(a)(2)(A) will be able to avoid the additional discretionary sanctions if they demonstrate reasonable efforts to submit adequate plans. The EPA proposes to define such efforts as the submittal, according to the planning schedule described earlier, of a plan that will produce reasonable progress toward attainment by a fixed date suitable for the area. As described below, the "reasonable efforts" attainment date for each area will depend on the degree of progress that the plan will produce each year. For that reason, the discussion below focuses first on the amount of progress EPA will regard as reflecting reasonable efforts for each pollutant, and then on the attainment date that would reflect such efforts.

a. *Progress Requirements*—i. *Ozone.* For ozone, EPA proposes to define a "reasonable efforts" level of progress for an area as the percent reduction described above for nonmarginal short-term nonattainment areas, extended until the year attainment is projected. Thus, after an initial demonstration of at least a 15 percent reduction for the period 1988–1992, the area must show a 9 percent reduction (beyond the measures noted earlier) for each subsequent 3-year period until attainment.[35]

[35] Where attainment is projected to occur between 3-year projections, the 3 percent annual reduction is required to continue until the year in which attainment is projected. In that year, the balance of the required reduction (up to 3 percent) is due.

Where such long-term nonattainment areas implement a measure that is later implemented at the national level, the areas may take credit toward the 3 percent requirement until the federally-implemented measure is in effect. At that time, the areas would have to have achieved sufficient emission reductions so that they continue to meet the annual requirement to obtain 3 percent emission reductions beyond all federally-implemented measures. The EPA solicits comments on this approach and other options to address these situations. In particular, EPA invites comment on whether the State should be able to maintain the "credit" toward the 3 percent requirement even after a Federal measure is implemented which would supersede or duplicate the effect of the State measure. One option may be to allow the State this credit indefinitely except for those measures that EPA is currently implementing or has proposed as of the date of this notice. This option might also require the State measure to be implemented for a minimum amount of time before the Federal measure is effective in order for the "indefinite credit" to be allowed.

TABLE I.—SUMMARY OF OZONE AND CARBON MONOXIDE SIP REQUIREMENTS

Type of area	A Federally Prescribed Requirements Applicable Before 1987 and Therefore Not Creditable Toward Meeting Requirement in Column C (Assumes No Approvable Photochemical Dispersion Modeling Demonstration)	B Federally Prescribed Requirements Applicable for the First Time After 1987 and Therefore Creditable [A] Toward Meeting Requirement in Column C (Assumes No Approvable Photochemical Dispersion Modeling Demonstration)	C Requirement for Annual Average Emission Reduction of 3 Percent of Adjusted Base Year Inventory for MSA/CMSA Commencing in the Year of the SIP Call
I. Area that received section 172 extension and whose post-1987 SIP does not adequately demonstrate attainment within 3-year period in section 110(a)(2)(A).	*Ozone:* RACT for CTG I, II, and III and for major non-CTG sources, to be applied in designated ozone nonattainment areas. *Ozone nd CO:* Basic I/M program required by section 172(b)(11)(B).	*Ozone and CO:* Enhancements beyond basic I/M program (for areas with an urbanized population above 200,000).	Applicable.
II. Area with section 172 extension whose post-1987 SIP adequately demonstrates attainment within the 3-year period.	Same as above	*Ozone and CO:* Enhancements beyond basic I/M program only for areas above 200,000 urbanized population and at 0.16 ppm or above for ozone, 17 ppm or above for CO.	Applicable unless areas a "marginal non-attainment area". [B]
III. Nonextension designated nonattainment area (other than rural under old policy) that received a pre-1987 SIP call and did not receive EPA's approval of a demonstration of attainment by the end of 1987, *and* whose post-1987 SIP does not demonstrate attainment within the 3-year period.	Same as above (Basic I/M presumed required in EPA's 1984 guidance on correction of Part D SIP's for nonextension areas that did not demonstrate attainment by the end of 1987 without it).	*Ozone and CO:* Enhancements beyond basic I/M program for areas with urbanized population above 200,000.	Applicable.
IV. Same as III, but post-1987 SIP adequately demonstrates attainment within the 3-year period.	Same as above (per 1984 guidance).	*Ozone and CO:* Enhancements beyond basic I/M program only for areas above urban population above 200,000 and at 0.16 ppm or above for ozone, 17 ppm or above for CO.	Applicable unless area is a "marginal nonattainment area."
V. Nonextension designated nonattainment area (other than rural under old policy) that received a pre-1987 SIP call and received EPA's approval of a demonstration of attainment by the end of 1987, *and* whose post-1987 SIP does not demonstrate attainment within the 3-year period.	*Ozone:* RACT for CTG I, II, and III in designated ozone nonattainment area.	*Ozone and CO:* Enhanced I/M required for areas above 200,000 urbanized population with credit for entire program toward meeting Column C requirement.	Applicable.
VI. Same as V, but post-1987 SIP adequately demonstrates attainment within the 3-year period.	*Ozone:* Same as V	*Ozone and CO:* Enhanced I/M required only for areas above 200,000 urbanized population and at 0.16 ppm or above for ozone, 17 ppm or above for CO with credit for entire program toward meeting column C requirement.	Applicable unless area is a "marginal nonattainment area."
VII. Nonextension area designated nonattainment area (other than rural under old policy) that did not received a pre-1987 SIP call and whose post-1987 SIP does *not* adequately demonstrate attainment within the 3-year period.	*Ozone:* RACT for CTG I and II in designated nonattainment area (for all sources except that, where the area demonstrated attainment by 1982 without controlling non-major sources, RACT was required on major sources only).	*Ozone:* RACT for CTG III (and for non-major CTG I and II sources for which RACT was not required prior to 1987) in certain area.[C] *Ozone and CO:* Enhanced I/M required for areas above 200,000 urbanized population, with credit for entire program toward meeting Column C requirement.	Applicable.

TABLE I.—SUMMARY OF OZONE AND CARBON MONOXIDE SIP REQUIREMENTS—Continued

Type of area	A Federally Prescribed Requirements Applicable Before 1987 and Therefore Not Creditable Toward Meeting Requirement in Column C (Assumes No Approvable Photochemical Dispersion Modeling Demonstration)	B Federally Prescribed Requirements Applicable for the First Time After 1987 and Therefore Creditable [A] Toward Meeting Requirement in Column C (Assumes No Approvable Photochemical Dispersion Modeling Demonstration)	C Requirement for Annual Average Emission Reduction of 3 Percent of Adjusted Base Year Inventory for MSA/CMSA Commencing in the Year of the SIP Call
VIII. Same as VII, but post-1987 SIP adequately demonstrates attainment within the 3-year period.	*Ozone:* RACT for CTG I and II in designated nonattainment area (for all sources except that, where the area demonstrated attainment by 1982 without controlling non-major sources, RACT was required on major sources only).	*Ozone:* RACT for CTG III (and for non-major CTG I and II sources for which RACT was not required prior to 1987) in certain area.[C] *Ozone and CO:* Enhanced I/M required only for areas above 200,000 urbanized population and at 0.16 ppm or above for ozone, 17 ppm or above for CO with credit for entire program toward meeting Column C requirement.	Applicable unless area is a "marginal nonattainment area."
IX. MSA containing no designated nonattainment area, and whose post-1987 SIP does not adequately demonstrate attainment within the 3-year period.	None	*Ozone:* RACT for CTG I, II, and III in certain area.[C] *Ozone and CO:* Enhanced I/M required, with credit for entire program toward meeting Column C requirement.	Applicable.
X. Same as IX, but post-1987 SIP adequately demonstrates attainment within the 3-year period.	None	*Ozone:* RACT for CTG I, II, and III in certain area.[C] *Ozone and CO:* Enhanced I/M required only for areas above 200,000 urbanized population and at 0.16 ppm or above for ozone, 17 ppm or above for CO with credit for entire program toward meeting Column C requirement.	Applicable unless area is a "marginal nonattainment area."
XI. Non-MSA (rural) area designated nonattainment for ozone and shown to be self-generating.	RACT for major sources in CTG I and II in designated nonattainment area.	RACT for non-major sources in CTG I and II, all sources in CTG III in designated nonattainment area.	Applicable if post-1987 SIP does not adequately demonstrate attainment within 3-year period or if design value of.
XII. Non-MSA (rural) area designated nonattainment for ozone and shown to be nonself-generating.	RACT for major sources in CTG I and II in designated nonattainment area.	None	Not applicable.
XIII. Non-MSA (rural) area that is not designated nonattainment for ozone and that is shown to be self-generating.	None	RACT for CTG I, II, and III in SIP call area.	Applicable unless area is a "marginal nonattainment area."
XIV. Non-MSA (rural) area that is not designated nonattainment for ozone and that is shown to be nonself-generating.	None	RACT for major sources in CTG I and II in SIP call area.	Not applicable. 0.16 ppm or above for.
XV. Area designated rural nonattainment are under old policy and urban (MSA) under proposed policy which can adequately demonstrate attainment within 3-year period in post-1987 SIP.	*Ozone:* RACT for major sources in CTG I and II in designated nonattainment area (or other control area approved in Part D SIP).	*Ozone:* RACT for CTG III and for non-major CTG I and II sources in the central county(ies). *Ozone and CO:* Enhanced I/M required only for areas above 200,000 urbanized population and at or above 0.16 ppm ozone or 17 ppm CO, with credit for entire program toward meeting Column C requirement.	Applicable unless area is a "marginal nonattainment area."

TABLE I.—SUMMARY OF OZONE AND CARBON MONOXIDE SIP REQUIREMENTS—Continued

Type of area	A Federally Prescribed Requirements Applicable Before 1987 and Therefore Not Creditable Toward Meeting Requirement in Column C (Assumes No Approvable Photochemical Dispersion Modeling Demonstration)	B Federally Prescribed Requirements Applicable for the First Time After 1987 and Therefore Creditable [A] Toward Meeting Requirement in Column C (Assumes No Approvable Photochemical Dispersion Modeling Demonstration)	C Requirement for Annual Average Emission Reduction of 3 Percent of Adjusted Base Year Inventory for MSA/CMSA Commencing in the Year of the SIP Call
XVI. Same as XV, but cannot adequately demonstrate attainment within 3-year period in post-1987 SIP.	*Ozone:* RACT for major sources in CTG I and II in designated nonattainment area (or other control area approved in Part D SIP).	*Ozone:* RACT for CTG III and for non-major CTG I and II sources in the central county(ies). *Ozone and CO:* Enhanced I/M required only for areas above 200,000 urbanized population, with credit for entire program toward meeting Column C requirement.	Applicable.

[A] Except in areas that included these requirements in the portions of their SIP's approved on or before publication of today's notice.
[B] Defined as an area able to demonstrate near-term attainment with only (1) federally-implemented measures, (2) measures required for the area in EPA's pre-1987 guidance, and (3) the specifically identified and legally enforceable commitments and adopted measures in the portions of the area's SIP approved in today's notice.
[C] The controls are applied in the designated nonattainment area, or control area included in the previously approved Part D SIP, if applicable, for areas currently designated nonattainment under section 107 and previously designated areas now experiencing NAAQS violations. For newly found nonattainment areas, controls are applied in the "central" county.

Since future measures are expected to be increasingly more difficult to develop and implement, EPA believes that the lower end of this range (i.e., 3 percent per year) should be used in determining whether the State is making reasonable efforts. In addition, EPA believes that a requirement of less than 3 percent per year could result in unreasonably long-term attainment dates for some areas. Therefore, EPA will presume that an area is making reasonable efforts to provide for expeditious attainment (and reasonable further progress) if its SIP measures (not including the measures described earlier) will produce average annual emission reductions equal to 3 percent of the base year emissions. Once the Federal measures no longer provide a net benefit, all growth including that from sources affected by Federal measures, must be factored into the 3 percent requirement. Stated differently, long-term ozone nonattainment areas will need to demonstrate sufficient reductions to reduce their emissions inventories by the required percentage regardless of the amount of growth that occurs from all source categories. In high-growth areas, this could require reductions from existing sources greater than an average annual 3 percent, in order to compensate for new source (or vehicle) growth. The EPA solicits comments on whether it should alleviate the additional pressure that growth would create, by permitting States to use the expected reductions from the FMVCP to compensate for emissions growth while meeting their percent reduction requirement (as long as the FMVCP program and other Federal measures provide a net reduction).

Areas that cannot demonstrate attainment within the 3-year period in section 110(a)(2)(A) may seek to avoid the construction ban by demonstrating attainment within the extended period allowed by section 110(e). As indicated earlier, that section permits a 2-year extension of the attainment date only if:

(A) One or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plans which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such 3-year period, and

(B) The State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the 3 years cannot be achieved.

It is clear that Congress intended to authorize EPA to consider the economic feasibility or reasonableness of the available means of attainment in making the judgment under paragraph (A). (If Congress had not intended to do so, no area would be eligible for the extension, since all areas can attain the standard within 3 years simply by shutting down all economic activity.) Therefore, EPA interprets paragraph (A) to require only a showing that the implementation of the "reasonably available alternative means" (RAAM) described in paragraph (B) would not bring about attainment within 3 years. Paragraph (B), then, would provide assurance that those reasonably available means are indeed implemented to achieve progress within the 3-year period.

Therefore, an area will be eligible for the 2-year extension if it demonstrates that it is actually implementing the RAAM within the 3-year period and that it still cannot attain within that 3-year period. The area then would not be subject to the construction ban if it could then demonstrate attainment in the 2-year extension period. The EPA proposes to define the RAAM as the set of prescribed measures and the emission reduction percentage that are also applicable to other long-term ozone nonattainment areas.

ii. *Carbon Monoxide.* For long-term CO nonattainment areas, EPA proposes to define "reasonable efforts" as two sets of measures—one for hotspots and one for areawide problems.

For hotspots, defined for these purposes as localized problems with localized solutions (such as traffic changes at the hotspot locations), EPA will require the State to include in its SIP revisions enforceable commitments (1) to implement the localized solutions for all currently known hotspots by the end of the 3-year period and (2) for all hotspots identified for the first time within that period or thereafter, to implement the localized solutions within 3 years of the identification.

For areas that have areawide CO problems, EPA proposes to define "reasonable efforts" as, in addition to

any hotspot requirements that may apply, the average annual emission reduction described above for long-term ozone nonattainment areas. Although past CO SIP's have relied primarily on the FMVCP to reduce emissions by this range of annual levels, EPA believes that additional measures are potentially available at reasonable cost for application in these long-term areas. A list of available measures that States should consider in deciding how to meet the percent reduction requirement appears in Appendix C.

As discussed above for ozone, States should develop their control strategies so that the minimum 3 percent reduction starts as early as possible and occurs at a continuous rate until attainment is achieved. But, for the same reasons discussed above for ozone, the earliest practical date to assess compliance with the reduction requirement will be in 1993 (for the year 1992). States will be required to achieve creditable emission reductions of at least 15 percent (an average of 3 percent over the 5-year period of 1988–1992) by the end of 1992. Thereafter, States must achieve reductions of at least 9 percent every 3 years until attainment.

The EPA is considering, however, whether it may be appropriate to require a lesser reduction from long-term CO nonattainment areas (perhaps especially in the period shortly after the SIP revision is due). In contrast to the case for ozone, these areas will not be able to rely significantly on stationary source control measures to supplement TCM's as a means to meet the requirements. Most CO nonattainment problems result almost exclusively from automotive pollutants. Thus, it may be more difficult for CO nonattainment areas than for ozone nonattainment areas to meet a 3-percent reduction requirement (in addition to offsetting growth), at least in the short term. The EPA solicits comments especially on how to assure that local areas aggressively continue to implement reasonably available local controls while not requiring more control than can or needs to be achieved, i.e., is 3 percent most appropriate or is another level or approach more appropriate?

So long as federally-implemented measures continue to achieve a net emissions reduction, considering growth in sources affected by those Federal measures, States will not be required to account for such growth in meeting the 3 percent requirement. However, States must account for all other source growth during this period. Once the Federal measures no longer provide a net benefit, all growth must be factored into the 3 percent requirement. The EPA solicits comment, however, on whether it should alleviate the additional pressure that growth could create, by permitting States to use the expected reductions from the FMVCP to compensate for stationary source emissions growth in their percent reduction calculations.

As in the case of ozone, EPA will use the requirements for long-term areas, described above, as its definition of "reasonably available alternative means," for the purpose of its decisions on whether to grant extensions to CO nonattainment areas under section 110(e).

b. *Attainment Dates.* The attainment dates that EPA believes will reflect "reasonable efforts" for long-term ozone and CO nonattainment areas are the dates on which attainment of the relevant standard is projected to occur if the required level of progress is achieved.

Thus, the applicable "reasonable efforts" attainment date for an area will turn on the percent reduction required. As a simplified example, if an area needs a 50 percent VOC emission reduction to attain the ambient standard and if national measures (e.g., FMVCP, RVP, onboard) will provide reductions of 20 percent, the area must achieve a net emission reduction (accounting for growth) of 30 percent. Assuming the minimum required rate of progress of 3 percent per year, the area must show that its strategy will provide for attainment within 10 years of the base year (30 percent reduction divided by 3 percent reduction per year).[36] Procedures and a worksheet for calculating the attainment date are in Appendix K. For areas demonstrated to be limited to CO hotspot problems and their solutions, the attainment date is the date (presumed to occur within the 3 year period) by which all necessary hotspot control measures will be implemented.

C. *Measures Selected by the State.* States are required to select such measures as will allow their nonattainment areas to attain by the required date as discussed in section IV.B. and to show the required expeditious progress in the interim. There are conceivably a variety of different control programs which could achieve this requirement. The discussion below addresses some issues that are likely to arise as the States study and select control measures after 1987.

[36] Provided that the federally-implemented measures produce the 20 percent reduction within the same 10-year period.

1. *Stationary Source Control Measures.* The EPA has prescribed RACT requirements for the Group I, II, and III CTG sources discussed in section IV.A. and previously approved SIP's may have included additional stationary sources control obligations (as shown in Table I). Rather than specifically prescribe yet additional control requirements needed, this policy requires an average 3 percent reduction in emissions per year for many areas, as described in section IV.B.

In order for an area to show the required 3 percent reduction, it may be necessary for stationary source controls beyond those specifically required by EPA to be adopted. In areas that exceed the ozone standard by a wide margin, it seems almost a certainty that new stationary source control measures will have to be incorporated into the SIP.

Stationary sources fall into two types: (1) Point sources and (2) area sources. States will have to evaluate what stationary sources in affected areas are present and not already covered by EPA requirements. Table C–1 in Appendix C gives a list of various types of stationary point sources which are not covered by CTG's. Appendix C also contains titles of some technical reports written by EPA which may be of help to States as they evaluate non-CTG source control. The Table C–1 list could be a good starting point for States to use in evaluating where emission reductions can be made through stationary source control. However, this list is neither exhaustive nor prescriptive, and each State should examine its own emission inventory to identify stationary point sources that may be suitable for control.

Area sources can give rise to VOC emissions which, in some locations, may be as large or larger than point sources. However, area sources are often not addressed in control programs and have not been controlled in many locations in the past.

Area sources are emission sources that are relatively small taken individually, but in the aggregate are large, because there are large numbers of these sources scattered throughout the area. An example would be architectural coatings. Thousands of homeowners in an urban area may each use a few gallons of paint per year. Individually, each user's VOC emissions are small, but taken together, because of the large number of individual users, emissions could be relatively large. Table C–1 in Appendix C lists some important area sources that States should consider controlling for large VOC reductions. One item on the list which may need explanation is

"consumer solvents." This term covers solvent emissions from common household items such as aerosol paints from small spray cans, hair spray, cleaners, insect sprays, polishes, waxes, deodorants, and many other common items. Control measures to reduce VOC emissions from these items would probably entail reformulating the product so that it contained less VOC, perhaps by making it as a waterborne product.

For stationary sources, in order for emission limiting regulations and control measures to be properly adopted, the regulation or measure must meet the requirements for public hearing, be adopted by the appropriate board or authority, and establish, by regulation or permit, a schedule and date for each affected facility to achieve compliance.

2. *Air Toxics/Ozone Policy Interface.* Ozone SIP development has significant relevance to important nationwide efforts currently under way for the control of toxic air pollutants. This is in part true because both programs are concerned with many of the same sources and are being implemented in large measure by the States and local agencies. For these and other reasons (stated below), EPA is proposing a policy which stresses that the development of ozone SIP's should, wherever possible, incorporate measures that reflect air toxics controls.

Air toxics present a complex national problem resulting from numerous and diverse sources. A large potential problem is believed to exist from the mixture of sources and toxic pollutants present in most major urban areas that are also nonattainment for ozone.

Under EPA's National Air Toxics Strategy, released in June 1985, the Administrator stressed the importance of using all available existing authority to address the air toxics problem. One of the principal existing authorities envisioned for use under the strategy is that contained in section 110 of the Act governing SIP development, since it had proven in the past to be effective in limiting the aggregate risk to the public. Based on previous estimates within EPA's 6-month study,[37] particulate matter and VOC SIP actions are believed to have reduced the aggregate risk from 16 different toxic pollutants by about 50 percent during the period from 1970 to 1980. A follow-up study suggests that additional reductions of 25 percent and more would result from new SIP control activities. Many of the same sources causing the ozone problem will be of concern in evolving State air toxics programs. Thus, for reasons of regulatory effectiveness, administrative efficiency, and good sense the development of ozone SIP's and State air toxics control programs should be well coordinated in their timing and substance.

Toxics and ozone control programs should be coordinated at various levels. First, State and local programs will be encouraged to develop and implement a toxics component in their ozone plans on their own initiative. This is conducive to efficient air quality management because, as stated above, the ozone and toxics efforts address many of the same sources. Second, EPA can promote the adoption of toxics measures through the way it reviews SIP's. This can take the form either of discouraging proposed provisions that are counterproductive to toxics control or of encouraging productive measures as part of general determinations of whether "reasonable efforts" are being made. Third, EPA will consider air toxics concerns in its own actions relative to ozone SIP development. These actions include the possible development of any nationally presumptive VOC control measures or promulgation of any measures under section 110(c) of the Act. Finally, increased attention can be paid in nonattainment new source review permitting under Part D of the Act to reflect an intended consideration of air toxics.

The EPA is in the process of examining a variety of potential strategies for reducing air toxics in the context of VOC control and estimating the payoff associated with these various potential SIP measures. This should assist State and local agencies in not only maximizing total environmental benefit of the VOC control strategies selected but also in avoiding control measures that are counter-productive. The EPA intends that this initial guidance be available in time to facilitate implementation of the policy on ozone and air toxics as articulated above. The EPA solicits comments on what this guidance should consist of and on the contents of today's proposed policy for coordinating air toxics control and ozone SIP development.

3. *Transportation Control Measures.* In many cities exceeding the ozone NAAQS, mobile sources make up one-half or more of the VOC emissions. The CO nonattainment problem is almost exclusively related to mobile sources. The EPA recognizes that many cities are experiencing high rates of growth in overall VMT, which will overcome reductions from the FMVCP and I/M programs in the near future. In a few cities with extremely rapid growth, this event has already occurred. The EPA believes that many metropolitan areas will, of necessity, evaluate and select for the control strategy, transportation measures capable of offsetting the effects of such growth in the future to the extent necessary to provide for attainment and maintenance, and to meet the required rate of progress.

a. *Requirements for Adoption of Transportation-Related Control Measures.* Emission reductions from the transportation sector range from short-term measures that can be developed and implemented over a few months or a couple of years and with limited intergovernmental coordination, to measures that involve very complex planning and extensive political processes. The latter measures are generally referred to as "long-term" measures. These long-term measures will generally be more difficult to implement, have higher social impacts, and therefore have a greater degree of public interaction. In certain cases, some of these measures (e.g., tax disincentives and vehicle restrictions) could be implemented in the short-term; however, the States may choose to implement these measures later in their long-term strategies due to the high social impacts. In other cases, it may take a long time to develop these measures conceptually, develop the technical details, and secure the necessary funding (e.g., major mass transit projects). While the States may choose measures as long-term measures for these noted reasons, EPA believes that for the SIP strategy to be credible and approvable, there must be at least some minimum "form of adoption" for these long-term measures. This adoption may be somewhat different from that of the short-term measures that have implementation commencing in the immediate future. However, the long-term measure adoption must be sufficiently binding on the State to assure that the identified measure will in fact be implemented according to the schedule approved in the strategy.

Transportation control measures are to meet the following criteria in order to be considered as properly adopted. The SIP must contain the following:

(1) A complete description of the measure and its estimated emission reduction benefits must be provided;

(2) Evidence that the measure was properly adopted by the jurisdiction(s) with legal authority to commit to and execute such program (e.g., Attorney General's certification of adoption);

[37] The Air Toxics Problem in the United States: An Analysis of Cancer Risks for Selected Pollutants. U.S. EPA. May 1985.

(3) Evidence that funds to implement the measure are obligated or on an acceptable schedule;

(4) Evidence that all necessary approvals have been obtained, from all appropriate governmental entities, including State Highway Departments where applicable;

(5) A schedule for completion of planning, engineering, development, start of construction, if applicable, and for start of operation which has been adopted by the implementing agency in an appropriate enforceable form; and

(6) A description of the monitoring program to assess the effectiveness of the measure and to allow for in-place corrections or alterations to obtain the full effectiveness.

As noted above, EPA believes that for some areas to attain the ozone or CO standard, certain additional measures will be required, over and above those now commonly accepted as implementable in the short term. In previous SIP submittals, EPA has accepted commitments from States to study various control scenarios, with the condition that the State submit a future SIP revision describing the results of its study and adopting a particular control measure or measures to adequately demonstrate attainment. Such "open-ended" study programs have rarely resulted in adopted control which has contributed to the emissions reductions shortfalls that have prevented these areas from achieving attainment.

The EPA proposes today that, for areas needing long-term measures (including, but not limited to, TCM's) to demonstrate attainment of the NAAQS, such SIP revisions must contain "adequately adopted" programs to ensure that commencement of implementation of those measures occurs in the most expeditious manner practicable. The EPA recognizes that not all areas needing such long-term measures will be able to complete all of the necessary and required activities and processes associated with such long-term measures by the due date of the initial SIP. Therefore, for those areas requiring long-term measures to demonstrate attainment but that cannot fully complete the adoption process associated with such measures in the first 2 years, EPA will allow a two-phase adoption process. The initial SIP must identify the long-term measures, estimate their expected emissions reduction benefit, describe the various processes to complete all planning, funding, and review by the various agencies and organizations involved, define the decision steps leading to adoption, and provide a schedule and commitment for completion of adoption of these measures.

The second phase of the adoption process will require that the measure be submitted to EPA in "final adopted" form, in the most expeditious manner but no later than 3 years after the initial SIP is due (see Section II, Planning Schedules). In addition, this second submittal is to provide a final schedule for the implementation of the previously selected measure(s) described in the initial SIP.

If the States fail to carry out their adoption process with respect to these measures, EPA will consider that the State is not making reasonable efforts to develop a plan which provides expeditious attainment and the State, therefore, may be subject to additional sanctions.

The EPA recognizes that some of these long-term measures may not actually be scheduled for implementation until well into the future. However, given the overall emission reduction targets for some of these areas and the lead times required to implement such measures, EPA believes that requiring this "up-front adoption" from the State will provide some additional assurances that the air quality standards will be achieved in a manner consistent with the demonstration.

In subsequent rounds of demonstrations (every 6 years) when a new demonstration is made, there may be an opportunity to revise the measures and provide additional detailed information and milestones regarding the implementation of those measures. Any modifications to the strategy must ensure that the required annual emission reductions are achieved.

D. *Role of Nitrogen Oxides (NO_x).* The efficacy of VOC and NO_x controls depends on the relative amounts of each pollutant in the atmosphere. If there is a lot of VOC and little NO_x ozone can be reduced by controlling the limiting ingredient (NO_x). Relative amounts of VOC and NO_x are expressed as the NMOC/NO_x ratio. The higher the ratio, the more likely NO_x controls are to be beneficial. In some cases (photochemical grid models), this ratio is derived from inventories and meteorological inputs. In others (EKMA model), it is derived from measured data. There is considerable uncertainty attendant to both approaches. The EPA has been conducting special, limited duration studies for the past 3 years in which NMOC/NO_x ratios were measured. Although there is wide variability in the data, typical ratios appear to be about 12:1. This value is in a range where NO_x controls, in addition to VOC reduction, could be useful in reducing ozone under some conditions. Evidence suggests that each city can be characterized in terms of a "critical" NMOC/NO_x ratio above which control of NO_x may be beneficial in reducing ozone. Based on currently available information, EPA believes a critical ratio may be about 10:1. Therefore, recognizing this potential for NO_x controls to contribute in an ozone attainment strategy, EPA proposes to require post-1987 ozone SIP's to evaluate the effectiveness of locally-implemented NO_x control where the median ambient NMOC/NO_x ratio is equal to or above 10:1. Below this ratio, benefits of reducing NO_x in addition to VOC are less likely. Of course, States may still evaluate NO_x controls at ratios below 10:1, even though EPA does not require the evaluation.

The effectiveness or advisability of NO_x reductions could be assessed to determine their ability to (1) expeditiously reduce peak ozone, (2) work effectively with VOC measures needed to attain the NAAQS, and (3) reduce population exposure to ozone. Guidance describing the technical requirements for the evaluations is contained in "Consideration of NO_x Control in Ozone SIP's," EPA, Sept. 1987 (Draft).

Upon completion of the evaluation, States may proceed to identify and, if appropriate, implement NO_x measures which will supplement VOC controls and produce attainment of the ozone NAAQS. The EPA will require States implementing NO_x measures to determine a minimum rate of NO_x emission reduction which will result in attainment as expeditiously as a VOC-only strategy.[38] Then, the VOC annual reduction requirement may be adjusted such that the VOC strategy achieves reductions at a uniform rate from the date of the SIP call to the attainment date previously determined by the VOC-only strategy. The procedure for this is included in the proposed Policy Statement at the end of this notice.

The EPA's present policy allows NO_x controls to supplement VOC strategies in certain cases. However, because certain VOC RACT controls are required (see Table I) as assurance of

[38] For determining compliance with this rate, EPA will not require States to account for growth in sources affected by federally implemented NO_x measures (i.e., FMVCP) so long as these measures continue to achieve a net emission reduction considering the effects of such growth. However, States must account for all other sources growth during this period. After this period, all growth must be considered in determining compliance with the rate.

attainment (in recognition of the uncertainties associated with the EKMA modeling demonstrations) substitution of NO_x control for the required VOC RACT controls is not allowed unless supported by a rigorous demonstration using photochemical grid modeling. The EPA will continue this policy.

E. *Control of Transported Ozone and Precursors*—1. *Northeastern States.* The EPA recognizes that the phenomenon of multi-day transport of ozone and its precursors in the northeastern States significantly complicates efforts of individual States to develop strategies to attain the ozone NAAQS. With a nearly continuous string of closely located urban areas spread over extended distances and political boundaries, this portion of the country will ultimately need a regionwide analysis to determine the collective adequacy of various State control strategies.

Northeastern States need information to estimate inbound ozone and precursors when they use urban scale models, and to evaluate the effects of both regional and combined urban ozone control strategies on regional ozone and precursor levels. Applications of the EPA-developed ROM and subsequent interpretation of the results will provide this information. However, due to the need for the development of a regional emissions data base and multiple strategy assessments, the ROM results will not be available until after the upcoming SIP revisions are due.

Section 110(a)(2)(E) requires each SIP to contain provisions adequate to prohibit emissions from stationary sources in the State that would "prevent attainment or maintenance by any other State" of any standard. For the reasons described in the section entitled "Affected Areas," EPA believes that States must account for the emissions contribution of attainment areas located within a CMSA (or MSA) to nonattainment problems within the same CMSA (or MSA).[39] This is required even where the attainment areas lie across the State border from the nonattainment areas within the CMSA (or MSA). To ensure this, EPA will issue SIP calls for all counties within the CMSA (or MSA), as well as non-MSA counties adjacent to the CMSA (or MSA) that are experiencing violations of the standard. These contributing areas will be required, through the planning process described earlier in this notice and the use of acceptable urban scale models, to show that their emissions controls are adequate to meet the requirements of section 110(a)(2)(E).

The EPA believes that the planning requirements for CMSA's (or MSA's) and adjacent non-MSA counties will satisfy the requirements of section 110(a)(2)(E) to the extent allowed by current urban scale modeling capabilities. These requirements, which focus on reducing emissions from CMSA's (MSA's) and adjacent nonattaining non-MSA areas, will address a majority of emissions contributing to ozone concentrations produced and transported within the northeast region (see discussion below).

Moreover, EPA believes that until the ROM effort is concluded, the Agency cannot determine the impact that these emissions have on multi-day transport of ozone and its precursors. Current information on such transport is insufficient to support a finding under section 110(a)(2)(H) that the SIP's for areas outside those covered by today's proposal are substantially inadequate to meet the interstate transport safeguards in section 110(a)(2)(E). See 49 FR 48152 (December 10, 1984) and 49 FR 34851 (September 4, 1984), for a more detailed discussion of EPA's interpretation of section 110(a)(2)(E).

Thus, while EPA recognizes that ROM results will be very helpful and ultimately necessary in determining the relative contributions of transported pollutants to ozone exceedances, EPA does not propose to allow a delay in the submittal of the post-1987 ozone attainment demonstrations and revised SIP's for areas affected by ROM.[40] The EPA believes the Act requires that attainment demonstrations be made using currently available models and data. This means that States must use urban-scale models, with appropriate assumptions of future transported ozone and precursors, based on recent experience, to provide city-specific SIP reduction targets. (Procedures for estimating present and future transported levels of ozone and precursors for use in the EKMA analysis are contained in the revised EPA guidance documents "Guideline for Use of City-Specific EKMA in Post-1987 Ozone SIP's" and "Consideration of Transported Ozone and Precursors in Regulatory Applications.") This urban-scale analysis must be submitted with the initial SIP. The EPA expects that implementation of control strategies designed to meet these urban-scale targets will substantially reduce local ozone and precursor levels and, in turn, will reduce transported ozone and precursor levels downwind. Whether these combined urban strategies are adequate to produce attainment must subsequently be tested in more refined demonstrations once the ROM results are available.

One of the issues concerning transport in the Northeast is whether to include upwind attainment areas in regional control strategies. These areas are believed by some to be a significant contributor to downwind transport. To assess the potential contribution of these areas to region-wide emissions (and to multi-day transport problems), EPA compared the emissions in a 13-State region [41] to the emissions of the MSA's/CMSA's within this area. Of the 5.9 million tons of VOC in the 13-State area, 75 percent are emitted in MSA's or CMSA's subject to this proposed policy. An additional 10 percent of the total emissions are from mobile sources in attainment areas in the 13-State region. These mobile sources are, or are expected to be, controlled by Federal measures (FMVCP, RVP, and onboard) which EPA intends to continue or to promulgate. Therefore, a substantial portion (85 percent) of the VOC emissions in the 13-State Northeast region would be affected by this policy.

Transport directly affecting downwind cities on the afternoon of the same day it was generated is primarily limited to a 100-mile range. The EPA also conducted a review of emissions in this smaller region. Within the 100-mile range of the MSA's (or CMSA's) located in the Northeast "corridor" (generally, cities along the coast), EPA's review indicates that nearly all (95 percent) of the emissions in this smaller region are affected by this policy. This is because the emissions in this smaller region are either (1) in an MSA (or CMSA) measuring nonattainment, (2) in a nonattainment area in the 100-mile range, or (3) come from mobile sources controlled or to be controlled by Federal measures.[42]

[39] References to emissions in this section in a CMSA (or MSA) also include all 100 tons per year stationary sources within 25 miles of the CMSA (or MSA) boundary.

[40] To aid in the development of regional strategies using results of the ROM analysis in the Northeast (ROMNET), EPA is proposing a State/EPA advisory committee. The committee would consist of senior EPA and State management. The EPA expects this committee to (1) coordinate with the ongoing ROMNET programs, (2) upon completion of the ROMNET analysis assist in selection and testing of the effects of regionwide control strategies in the development of urban scale plans, (3) help manage conflicts, and (4) review appropriate technical and policy guidance.

[41] Ohio, West Virginia, Maryland, Delaware, New Jersey, Pennsylvania, New York, New Hampshire, Connecticut, Rhode Island, Maine, Massachusetts, Vermont, and District of Columbia. Source of emissions data, 1980 National Acid Precipitation Assessment Program (NAPAP).

[42] See "Consideration of Transported Ozone and Precursors" for draft recommendations concerning

Continued

If the ROM analysis indicates that further emission reductions are needed from sources in areas outside MSA's and CMSA's covered by today's proposal, EPA will use its authority under section 110(a)(2)(H) to call for SIP revisions to achieve those reductions. Where emissions from stationary sources in one State are found to prevent attainment in another State, EPA will require the upwind State to address those emissions. Although section 110 contains no comparable provision to address interstate transport of mobile source emissions, EPA will use its authority under section 110(a)(2)(B) to require States to address mobile source emissions affecting nonattainment problems elsewhere within their own borders and Title II of the Act to address other mobile source emissions as appropriate.

2. *Other Areas Affected by Transport.*[43] The EPA considers the transport problem in other areas to be generally of a single-day phenomenon and confined to a smaller scale and to involve fewer States and cities than the Northeast problem. In addition, EPA's proposed requirement that the planning area be the MSA/CMSA is intended to address many of these situations involving smaller scale transport. Therefore, EPA believes that transport in these areas will be handled successfully by a combination of a broader planning area and urban-scale models, such as EKMA and Urban Airshed. While EPA does not anticipate the need for a regional model in areas outside the Northeast region at the present time, EPA clearly does not intend to discourage the development of more refined analytical tools which can be used in long-term nonattainment areas in subsequent rounds of nonattainment demonstrations.

F. *Accounting for Growth.* The EPA believes that one important reason for continued nonattainment problems is that the growth in emissions from new and existing sources was not accounted for in earlier plans and that control requirements have been less effective (than planned) in limiting or mitigating the increases. This growth, if not mitigated in the future, could significantly impede future attainment of the ambient standards.

The post-1987 ozone and CO plans must contain provisions adequate to ensure that future growth will be accounted for and reasonable further progress is maintained.[44] At least two options exist for addressing emission increases from major new sources or existing major source modifications: (1) Require emission increases to be offset with decreases at other sources, or (2) allow strategies to provide margins of growth (i.e., growth accommodation) by controlling beyond the federally-prescribed measures and other measures already needed to show reasonable further progress. Although an emissions offset program may provide more direct control over emissions growth at these sources, EPA believes that areas still subject to Part D of the Act are entitled specifically by virtue of section 173(1) to choose between an offset program and a control strategy which provides a growth accommodation for emission increases. In addition, EPA believes that the post-1987 nonattainment policy should establish consistent requirements for all areas to the extent they are consistent with the language and purposes of section 110 and Part D. Therefore, EPA is proposing to allow all States including those subject to section 110 [and, specifically, section 110(a)(2)(D)] to choose between these two approaches for addressing future emissions growth.[45] If the State chooses to provide a growth allowance for new or modified sources, it must describe in detail its tracking and recordkeeping procedures to manage such growth.

States may also decide on the approach for addressing growth from minor or area sources. An offset program for minor point sources or additional control measures to accommodate growth from minor point sources or area sources could be used to ensure that RFP is maintained. Where a State has an indirect source review program, it may be a useful tool for evaluating growth.

On a related matter concerning emissions growth in designated attainment areas and unclassifiable areas,[46] EPA is proposing to discontinue its practice of allowing statewide adoption of RACT as a substitute for preconstruction monitoring required under the Agency's prevention of significant deterioration program (PSD). In the past, EPA has allowed States to adopt RACT on a statewide basis instead of requiring preconstruction monitoring for VOC sources subject to PSD. The EPA now believes that this RACT option was an inadequate substitute for the knowledge gained from preconstruction monitoring. In addition, in some cases, this policy was also used inappropriately for sources subject to nonattainment requirements. As a result, this policy allowed some sources to avoid the offset requirement. In either case, EPA proposes to no longer allow such substitutions.

In addition, EPA proposes to extend the requirement for case-by-case offsets (or a growth allowance in an approved SIP) to major new sources and modifications to be located in self-generating rural ozone nonattainment areas. In its past policies (e.g., 44 FR 20372, April 4, 1979), EPA allowed such construction in all rural ozone nonattainment areas without meeting that requirement. The EPA now believes, however, that rural areas shown to contribute significantly to their own ozone problems should be treated, for purposes of the offset/growth allowance requirement, the same as urban ozone nonattainment areas. The EPA proposes to retain its policy of not applying that requirement in nonself-generating rural ozone nonattainment areas for the reasons discussed in its previous policy notices.

The EPA believes that additional emission reductions are achievable through the NSR/PSD programs. States may wish to consider measures which could obtain further control of emissions from new sources or modifications to existing sources as one way to address long-term growth in sources and their emissions. A list of possible new source review measures that States may wish to consider is contained in Appendix C.

G. *Adoption of Enforceable Regulations*— 1. *Legal Authority.* The requirements for a State to document its legal authority with regard to the adoption, enforcement and recordkeeping requirements for stationary source emission regulations have been previously established through EPA policy and regulations [see 40 CFR 51.340 (1987)]. However, with transportation-related control measures, there is less certainty on what would constitute an adequate adoption. As discussed in Section IV.C., many States will likely have to consider the adoption and implementation of various transportation-related measures in order to demonstrate attainment of the ozone or CO air quality standards. These measures must be adopted and

considerations of transport in the absence of regional scale modeling.

[43] This policy does not specifically address situations involving international transport. The EPA intends to address such situations through separate **Federal Register** notices involving the affected areas.

[44] When NO_x control is part of the ozone strategy, NO_x emissions must be accounted for in accordance with the provisions of this subsection.

[45] Of course, the construction ban on major source growth will continue in a nonattainment area until its SIP demonstration provides for attainment within 3 years of EPA's approval of its plan.

[46] Areas where sufficient monitoring has not been available to determine whether the area is nonattainment or not.

implemented under adequate legal authority, if they are to be successful. Of particular concern are those neighboring States with a common MSA/CMSA that need to have compatible legal authority in order to implement TCM's across the entire MSA/CMSA boundary. Therefore, EPA proposes to require that the SIP revision contain the Attorney General's opinion regarding the State's legal authority with respect to the adoption, implementation, and enforcement of transportation-related control measures.

2. *Public Participation.* The plan requirements set forth in this Policy Statement will require some nonattainment areas to evaluate and adopt a number of longer-term control measures that may depend for their creation on an extensive and complex planning and implementation process.

Certain Appendix C measures, such as road pricing (tolls) and the use of alternative fuels, could fall into this category if implemented on a broad enough scale. The SIP's containing measures that impact a broad segment of the public such as auto commuters should result from a process that effectively involves the public and other affected interests. This is especially important when one considers that voluntary compliance is needed for many of these transportation programs to be effective. For these reasons, EPA urges the State and local planning agencies to begin their public participation activities as soon as practicable.

The Clean Air Act Amendments of 1977 clearly emphasize the need for public and elected official input to SIP development. Section 172(b)(9) requires public involvement and consultation. This section requires nonattainment plans to: "* * * evidence public, local government, and State legislative involvement and consultation in accordance with section 174 and include (a) an identification and analysis of * * * plan effects and alternatives considered by the State; and (b) a summary of the public comment on such analysis." Sections 110 and 172(b)(1) of the Act require a "reasonable notice and public hearing" prior to adoption and submittal of the SIP. Additionally section 108(e) directs the EPA Administrator to issue guidance "from time-to-time" on methods to assure public involvement in all phases of the planning process funded by section 175, and "such other methods as the Administrator determines necessary to carry out a continuous planning process." Although the procedures in section 112(b)(9) and 174 literally apply only to areas still subject to Part D, these requirements provide a good indication of the type of planning procedures Congress likely would have envisioned for post-Part D planning in areas no longer subject to Part D. Thus, using a combination of its authority under section 108(e) and the requirement of sections 110(a)(2)(J) and 121 that SIP's reflect a satisfactory process of consultation between States and local governments, EPA intends to apply the criteria in these Part D provisions and related EPA guidance to verify the adequacy of public participation in the SIP development process even in areas no longer subject to Part D.

The goal of agencies engaged in the SIP revision process should be to achieve and maintain widespread public awareness and consensus on the nature of the air quality problem and agreement on the implementation of reasonably available controls necessary for its solution. The objectives supporting this goal are:

(a) To assure that the public and elected officials understand the: (1) Public health and welfare dangers of air pollution, (2) the nature of the SIP revision process and the role of the public and officials in it, and (3) the nature and impacts of TCM's and their relationship to other attainment strategies;

(b) To encourage active involvement of a broad range of interested and affected constituencies in the SIP revision process;

(c) To assure public understanding and agreement on needed reasonably available transportation air quality measures;

(d) To assure that interested and affected constituencies are identified, informed, and consulted before decisions are made that significantly affect the public;

(e) To assure that EPA and elected officials consider and are responsive to the concerns of these constituencies when making such decisions; and

(f) To foster a spirit of openness and mutual trust among responsible agencies, elected officials and the public, thereby establishing and maintaining the legitimacy and credibility of the SIP revision process.

Detailed guidelines for developing a public participation plan are given in "Public Participation in the State Implementation Plan Transportation Revision Process: Expanded Guidelines," June 23, 1980 (45 FR 42023). Also, guidance for public hearings is given in 40 CFR 51.102 (1987), which, to the extent applicable, should be used for the post-1987 SIP revisions.

The SIP should provide information on which units of government will take action or certify that these governmental units have the responsible authority to carry out the task with which they are charged.

Under sections 172(b)(10) and 174 of the Act, the SIP may provide that local governments or regional agencies rather than the State itself are responsible for implementing and enforcing particular plan provisions. The EPA presumes that this is one of the elements of Part D that Congress would intend EPA to apply [under sections 108(e), 110(a)(2)(J), and 121] for post-1987 planning in areas subject only to section 110. Where local entities play this type of planning role, (1) the plan provisions must still be adopted by the State and submitted to EPA by the Governor, (2) the State must evidence its determination that the local or regional body has legal authority to implement the provision, and (3) the local or regional body must evidence its commitment to implement and enforce the plan elements. For some elements, such as inspection/maintenance provisions, item (3) will also require a certification by the local or regional body that it has adopted necessary ordinances or other legislative authorization.

Actions by many agencies and elected officials are usually required before a transportation project is implemented The SIP should list the important actions, the agencies or officials required to take each action, and the schedule that will lead to implementation.

Where feasible, the lead planning agency shall be the metropolitan planning organization (MPO) designated to conduct the continuing, cooperative, and comprehensive transportation planning process for the area under section 134 of Title 23, United States Code, the organization responsible for the air quality maintenance planning process under regulations implementing section 174 of the Act, or the organization with both responsibilities. The lead planning agency is usually charged with obtaining the various commitments. This requires:

(a) Identifying all remaining actions and the agency or official responsible for each action, and

(b) Consulting with each agency or official to establish the date when the action will be taken.

The product of these efforts should be submitted in the SIP.

3. *Form of Emission Limits for VOC.* Emission limits have usually been expressed as rate units, often in terms of weight of emissions per unit of

production. For example, VOC regulations for coatings are often expressed in terms of pounds of VOC per gallon of coating (less water). The EPA has generally not required a limit on production (e.g., hours of operation or plant capacity) or, in the case of coatings, on the number of gallons which may be used. Such rate-only emission limits produce a qualitative reduction in VOC emissions in that, as long as production remains constant, emissions are reduced. However, if production increases, emissions may increase despite meeting the rate limit, although emissions will certainly be lower than they would have been if no emission limitation at all had been required. The EPA is considering whether it would be desirable to require States to use the emissions projected in the demonstration of attainment as enforceable mass emission caps. The EPA solicits comment on this issue.

If a State chooses to adopt an emission "cap type" limit, this should only be done in addition to a "rate type" emission limit based on emissions per unit of production or material used to reflect RACT. An emission cap should not be the sole emission limiting provision of a SIP since it does not by itself assure a reduction in emissions that is always proportional to production (e.g., a RACT-level reduction). If a State chooses to adopt a mass emissions cap, it must be reflected in the State plan demonstration.

Although EPA is not proposing to mandate emissions caps, States will nonetheless be required to identify expressly in their emissions inventories (and hence their attainment demonstrations) the amount of emissions from each facility with emissions of 10 tons per year or greater. These emissions projections must equate to any corresponding regulatory emission caps adopted as a provision of the SIP. The EPA solicits comment on whether, in the absence of emission caps, it should require States to assume in their inventories and demonstrations, the maximum operating capacity and hours of operation at each source or class of sources, as it currently requires for demonstration of attainment of the short-term NAAQS for major emitters of sulfur dioxide (SO_2).

V. Measuring and Assuring Progress and Maintenance

Although tracking progress toward attainment has always been recognized as an integral part of any overall strategy to attain the standards, the procedures and requirements related to tracking progress have generally not been well defined or consistently applied. As a result, the adequacy of the control strategies have not been thoroughly and periodically assessed after the initial plan submittal. Implementation problems (e.g., overestimates of measure effectiveness, underestimates of growth) have often not been identified in a timely manner and appropriate corrective actions have not been identified or implemented. The EPA believes that increased attention and resources directed at tracking progress, combined with clearly defined procedures for measuring and reporting progress, are needed to ensure that the attainment strategies are fully implemented and that timely, corrective actions are taken when necessary. The EPA also believes that an effective program for tracking progress will require a coordinated effort among States and EPA, and the combined State/Federal effort will continue to be needed to ensure that, once attainment is reached, appropriate measures and procedures are in place to provide for maintenance of the standards into the future.

The EPA's policy for approving the July 1982 SIP submittals [47] (for areas needing the extension until 1987 for attainment) called for annual reporting by States to show adherence, through time, to the RFP curves in their attainment demonstrations. The annual report was to indicate the total annual emission reductions occurring from stationary and mobile sources and was to be submitted along with the source emissions and annual State action report required by July 1 of each year (40 CFR 51.321–51.328). The EPA believes that annual reporting of reductions from complying sources is still needed but that periodic updates of the entire emissions inventory and the demonstration of attainment are necessary to ensure that adequate progress is being made and the "course" established for attaining the standard is correct.

The EPA also believes that tracking efforts should be well-focused on meaningful reporting elements and structured around reasonable reporting formats and schedules to avoid unnecessary resource burdens on States and EPA. To this end, EPA intends to integrate the activities to track progress to the extent possible with existing program structures (e.g., the National Air Audit System); however, EPA recognizes that changes in certain existing programs would be necessary to accommodate the tracking and reporting requirements.

[47] 46 FR 7187, January 22, 1981.

Because of the importance of tracking progress, EPA proposes to require the initial plan revision for each area to contain a commitment by the State to submit, within 9 months of the end of each calendar year, a report showing the area's compliance with the most recent RFP [48] curve that EPA had approved for the area and the commitments in the plan. In addition, the initial plan would have to contain a commitment by the State to submit (1) a complete emission inventory every 3 years and (2) an updated demonstration of attainment every 6 years (see discussion in III.B.5.a.i). To ensure that unusual or unexpected occurrences will not interfere with the State's efforts to attain the standard, the State must include in its initial submittal a demonstration that its emergency episode plan is consistent with the requirements of this policy (see V.C. "Requirements for Emergency Episode Plans"). The State plan must also specify criteria and procedures to be followed to ensure that federally-assisted projects conform with the SIP.

To further emphasize the importance of tracking progress, EPA plans to review the State tracking activities and reports and corrective actions (when needed) to determine primarily if the State is continuing to make "reasonable efforts" to provide for expeditious attainment and maintenance. Failure to meet commitments in the plan could result in EPA's revocation of its earlier finding of reasonable efforts and the imposition of the appropriate sanctions. Where the area has received approval of a plan showing near-term attainment and maintenance, failure to track progress and implement measures could result in a finding of nonimplementation and the resulting sanctions.

A. *Measuring and Assuring Progress.* The EPA proposes to require States to aggressively track and report (1) annually, emission reductions from SIP compliance and, periodically, the total emission inventory; [49] (2) the status of implementation milestones; and (3) air quality levels. In addition, States will be required to report on the results and corrective actions associated with rule effectiveness evaluations and, every 6 years, to redo their demonstrations of

[48] The EPA uses the term reasonable further progress (RFP) here as encompassing the demonstration of progress for all Part D areas as well as other areas subject to the "reasonable efforts" requirements described in section IV.

[49] The RFP report and the 3-year inventory will address emissions of VOC and NO_x (if NO_x control is included in the ozone strategy) and CO (if the CO problem is areawide). Control measures addressing CO hotspots will be tracked through implementation milestones (see V.A.1.b, "Implementation Milestones").

attainment for long-term nonattainment areas to ensure that their control strategies are still adequate to provide for attainment by a date reflecting reasonable efforts.

1. *Aggressive Tracking.* The major elements that will be tracked to ensure acceptable progress will be emission reductions and total emissions, implementation milestones, and air quality. Emission reductions and total emissions will be the primary indicators of whether RFP is being achieved. The EPA proposes to require States to report on certain types of emission reductions, implementation milestones, and air quality in an annual report due within 9 months after the end of the calendar year being reported on. Every third annual report would also have a complete, updated emission inventory.[50] The first annual report would be for the first full calendar year after the initial plan submittal is due. The first annual report should cover emission reductions and measure implementation since the base year.

a. *Emission Reductions and Total Emissions.* The EPA proposes to require States to report within 9 months of the end of the calendar year the emission reductions which occurred during that year as a result of compliance with the SIP regulations or measures. These reductions should be combined with any emissions growth during the year to arrive at a net emission reduction.

The amount of emission reductions will depend on the degree to which the regulation has been implemented and compliance has been achieved by the sources covered by that regulation. In the annual RFP report, the State will provide the status of regulations which were to have been adopted in that year plus the status of compliance efforts by affected sources. Emission reductions occurring in the reporting year which were initially scheduled for earlier years should also be covered. The revised SIP's would be required to contain a commitment that, if implementation or compliance problems cause a shortfall in the expected emission reductions from a source category (including expected reductions from mobile source measures) to occur, the State will develop and implement additional measures needed to achieve at least an equivalent amount of reductions as expeditiously as practicable. This would apply even to those TCM's that, though fully adopted, did not achieve the projected emission reduction. Additional measures must be submitted in a SIP revision within 9 months after the annual RFP report due date and must achieve the shortfall in emission reductions within 2 years of the end of the year being reported on. Subsequent annual reports should document the implementation of these additional measures.[51]

If delays in full compliance with the regulation(s) are expected, the State should highlight the compliance problems, estimate the date for full compliance, and within 9 months of the end of the reporting year discuss with the EPA Regional Office the problem and any recommended steps for resolution. The EPA believes the National Air Audit System may provide an appropriate forum in which to discuss these problems and possible solutions. Delays of less than 1 year will be assumed not to be significant, but the State and EPA will conduct quarterly reviews to ensure that the delays do not extend beyond 1 year. If delays are expected to last more than 1 year, States are required to develop and implement interim measures to achieve reductions equivalent to the shortfall until full compliance with the original SIP measure is achieved or to substitute measures to replace the original measure. Interim or substitute measures must be submitted within 12 months after the reporting year, and schedules for implementing the measures must ensure that the shortfall in emission reductions is achieved within 2 years of the end of the year being reported on. Subsequent annual reports must document implementation of the substitute or interim measures.

The EPA proposes also to require States to update every 3 years the entire emission inventory for their nonattainment areas. The initial plan submittal must contain a commitment to revise the SIP (within 9 months) of the due date of the RFP report containing the updated inventory if the inventory updates are higher than the emissions represented on the RFP curve. Corrective actions must ensure that the targeted emission inventory level will be achieved expeditiously, but no later than the end of the base year for the next inventory update.

These inventory updates will help ensure that initial assumptions for major and area source growth, emission factors, or inventory procedures are still correct. The emission inventory base year for each 3-year period shall coincide with the 3-year projection years used in the demonstration of attainment.[52] The emission inventory updates will be included in the annual progress reports for those years (i.e., the inventory update is due 9 months after the end of the updated base year [53]). These complete emission inventories every 3 years should also detail new source review (NSR) activity. New source growth should be summarized along with the offsets produced or the reductions from the plan's allowance for such growth.

Specific guidance on tracking emissions reductions is contained in an EPA document entitled, "Revised Guidance for Tracking Reasonable Further Progress (RFP) in Ozone Control Programs." (See Appendix H.) The guidance in this document generally applies to CO also and to NO_x where NO_x controls are included in the ozone control strategy. The EPA plans to develop guidance on tracking the implementation of TCM's. This guidance will focus on specific steps to determine the reductions that are actually being achieved by the TCM's. Specific guidance for developing the emission inventories is contained in "Emission Inventory Requirements for Post-1987 Ozone State Implementation Plans."

b. *Implementation Milestones.* States must annually report on the status of

[50] As discussed later, the first inventory update will be for the year 1992 and will be submitted in the annual report due in 1993.

[51] The EPA will evaluate the State's performance in responding adequately to identified emission reduction shortfalls or problems in implementing control measures. A failure on the part of the State to respond to such shortfalls or problems may result in EPA's rescinding its finding of "reasonable efforts" and imposing sanctions in the area. Although EPA does not expected to take immediate corrective action (e.g., sanctions) when a State first experiences implementation problems, persistent failure to meet the emission reduction requirements and implementation milestones in the current demonstration of attainment, despite the State's taking correction action as outlined in this section, may also result in EPA's rescinding its finding of "reasonable efforts" and imposing sanctions.

[52] The demonstration of attainment will contain projections of the emission inventory at 3-year increments. An updated, actual emission inventory will be required from States to show that they are achieving their required emission reductions. The inventory updates will be included in the annual progress report which covers that year.

[53] The emission inventory contained in the initial plan submittal generally must reflect emissions in 1987. (See Section III.C) The plan must also show emission reductions projected to occur between 1988 and 1992 and beyond. As stated in Section IV.B. "Requirements of Expeditious Attainment Dates and Reasonable Progress," EPA believes that, in most cases, 1992 will be the earliest year in which compliance with the 3 percent annual reduction requirement (which begins in the year of the SIP call) can be expected. Therefore, EPA will require the State to show that creditable emission reductions of at least 15 percent have occurred in 1992. Thus, the first progress report that will contain an entire emission inventory will be due in 1993 and will cover the emissions in 1992. Subsequent inventory updates for the projection years in the demonstration of attainment will be contained in the progress report for those years (i.e., 1995 inventory reported in 1996, 1998 inventory reported in 1999, etc.).

those milestones and commitments which were to have been satisfied in the reporting year. The status of milestones and commitments scheduled but not met in earlier years should also be reported. If a milestone has not been met, the State must document the problems and the plans for satisfying the commitment. The EPA will assume that delays of more than 1 year in meeting a milestone will significantly interfere with implementation of the measure. As such, EPA will consider rescinding its approval of the SIP (or, in the case of long-term nonattainment areas, its prior finding of reasonable efforts) and the imposition of sanctions unless the State demonstrates that full implementation of the measure will not be delayed beyond the original date contained in the SIP.

If the State finds that an expected milestone(s) for a measure is no longer appropriate, the milestone can be amended through a SIP revision. Thorough documentation will be needed to show that adjustments to the milestones and schedule are warranted. Significant delays in the implementation of the measure may necessitate substitute or interim measures. The EPA will review such changes and the need for substitute measures on a case-by-case basis. The EPA's decision will depend greatly on the schedule for other State measures and the efforts on the part of the State to implement this and other measures.

c. *Air Quality.* States should compare their emission reductions from year to year with ambient air quality levels. Although considerably variable, air quality levels can be used as indicators of the effectiveness of the control strategy measures. Air quality levels for ozone and CO should be reported in accordance with the "Revised Guidance for Tracking Reasonable Further Progress (RFP) in Ozone Control Programs." Significant divergence of air quality trends from estimated emission reductions may indicate the need for reexamination of the control strategy and demonstration of attainment.

In areas with long-term attainment dates, States are required to monitor each year the nonmethane organic compounds (NMOC) during the ozone season. The EPA proposes to require that the initial plan revisions contain commitments to perform NMOC and NO_x monitoring. These monitoring data are to be compared with the periodic (every 3 years) emission inventories in the appropriate annual progress report. These monitoring data will be used to evaluate the long-term trends and effectiveness of the control strategy and to support subsequent updates to the demonstration of attainment. Other States are also encouraged to establish monitoring sites for NMOC.

2. *Rule Effectiveness Evaluation.* Each year States and EPA Regional Offices will evaluate selected SIP regulations and programs to determine whether they are achieving their intended effect. The EPA will provide guidance for the rule effectiveness evaluations and identify each year those regulations and programs which should be the focus of the evaluations. In selecting regulations to evaluate, the EPA Regional Office and the State may jointly decide on a substitute regulation for evaluation according to the criteria in the above guidance.

The EPA will work with States, possibly through the existing National Air Audit System (NAAS), to complete a detailed review of one or more VOC regulations per year to uncover such problems as inadequate enforcement, improper test methods, ambiguous language in the regulations, and lack of proper training for agency or industry staff. The EPA and the State would then complete a joint report on the problems identified during the evaluation.

The results of each year's rule effectiveness evaluations will be summarized in the State's annual RFP report. Major problems will be identified, and actions needed to remedy the problems will be listed. The report should contain a schedule of the steps the State will take to correct implementation problems. The EPA expects implementation problems to be corrected within 1 year after the due date for the annual report. Subsequent annual reports should summarize corrective actions taken and their results.

3. *Subsequent Demonstrations of Attainment.* The EPA proposes to require States to reexamine their demonstrations of attainment periodically (every 6 years to coincide with every other updated emission inventory) based on up-to-date emission levels, modeling techniques, emission factors, and air quality levels (O_3, NO_x, NMOC, CO). States with attainment dates within the subsequent 6 years (from the original SIP due date or the date the updated demonstration is due) must also project their emissions for at least 10 years (from that date) to show that their strategies will provide for maintenance of the standards. States may also want to review and modify their demonstrations more frequently if changes in emission factors, air quality levels, modeling techniques, or other factors affecting the demonstration might indicate the need for changes to their control strategies. The EPA will periodically provide States guidance on these subsequent demonstrations, including information on base year emission inventories, modeling methodologies, and schedules for submittal. The EPA expects that these subsequent demonstrations will be due within 18 months after the end of the 6-year period.[54] The updated demonstration of attainment will consider the effects that implemented measures have had, including a comparison between these effects and the projections in the earlier demonstration(s).

The primary objective of the demonstrations of attainment (subsequent to the initial submittal) is to determine whether the resulting control program effectiveness, changes in air quality levels, the science of ozone formation and transport, or modeling or emission calculation procedures might significantly affect the strategy that has been developed for an area. Also, these subsequent demonstrations can provide greater detail for long-term measures (as additional details become available on the implementation of these measures) and fully incorporate any previous changes in the strategy (e.g., new measures to make up for shortfalls). The annual report should ensure that the original strategy is being effectively implemented. The updated demonstration of attainment will evaluate the ability of the strategy (as it has been implemented) to continue to achieve emission reductions sufficient to achieve the ambient standard as planned. If, for example, the updated demonstration indicates that more emission reductions will be needed than will be provided through full implementation of the current strategy, then additional measures must be developed and adopted by the State. Similarly, changes in the knowledge of ozone formation could possibly indicate that NO_x emission reductions, in addition to VOC reductions, would be effective in reducing ozone. The EPA will work closely with States in evaluating the implications of these types of changes as well as new developments in control technologies.

The EPA also believes that the subsequent demonstrations of attainment will provide an opportunity to review the performance to date of the State with regard to implementation of measures and achievement of the RFP emission reductions. In the review of the

[54] The first update to the demonstration of attainment (covering the period through 1995) will be due by mid-1997

updated demonstrations of attainment, EPA plans to assess whether reasonable efforts are still being made by the State to provide for expeditious attainment of the standards.

B. *Maintenance Plan and Continuity of Control Programs.* The objective of all SIP's is to attain the ambient standards. However, once attainment is reached, States must ensure that the SIP's are capable of maintaining the standards into the future. Maintenance programs will be composed of the redesignation from nonattainment to attainment (where this section 107 process is appropriate), continued monitoring of air quality levels and emission inventories, and maintenance strategies for assuring continued emissions reduction.

1. *Nonattainment Redesignation.* The EPA's current policies for redesignating an area from nonattainment to attainment will continue to apply. In general, for redesignations the State must demonstrate that the area no longer violates the ambient standard and the control plan for the area has been fully implemented. The specific requirements for ozone redesignations differ somewhat from those for CO redesignations particularly with regard to the air quality data needed to show that no violations have occurred.[55]

a. *Ozone.* States must provide at least 3 years of air quality data showing that no violations of the ambient standard have occurred. The data must represent (or be adjusted to represent) three complete ozone seasons. The EPA believes that the emissions throughout an MSA/CMSA can affect air quality throughout the MSA/CMSA. Under the planning requirements described earlier, EPA is proposing to require States to consider emissions throughout the MSA/CMSA in developing their ozone control strategies. Similarly, with regard to redesignations, EPA proposes to require States to show that no ozone violations are occurring at any monitoring sites in the MSA/CMSA before the designated nonattainment area can be redesignated to attainment. This is because the designated nonattainment area in such a case may be contributing to the monitored violations in the MSA/CMSA.

The EPA is considering alternatives for addressing redesignation requests involving transport areas. Under current policy, areas with downwind design sites located outside of the control area must show that attainment has occurred at the design site as well as in the control area. For such transport situations the EPA proposes to continue this policy.

For more complex transport situations (e.g., the Northeast areas covered in ROM analysis), EPA recognizes that several upwind areas may affect a specific area or several downwind areas. Several options are available for treating redesignations for these areas. A similar approach to the above, where all nonattainment areas remained designated so until attainment is shown in the downwind areas, could be followed. This approach would apply to an area that has fully implemented its strategy and reduced emissions to attain in that area, and reduced sufficiently its share of transport to the downwind area. This approach would require such an area to remain nonattainment while other areas (which contributed to transport) implemented their strategies over possibly much longer timeframes. Although the new source requirements would be similar after redesignation to attainment as they were under nonattainment (see discussion below on "Maintenance Strategy Requirements"), there would be fewer and less frequent reporting requirements and, of course, the area would be able to show that its air quality was in attainment.

As an alternative to requiring attainment in the downwind area before any upwind area could redesignate, EPA could allow an area to redesignate if it had attained in its area and achieved reductions for its share of the transport problem.[56] The EPA will evaluate this alternative and the one described above plus any others identified through comments to determine an equitable approach to redesignating upwind areas while still ensuring expeditious attainment in all areas (upwind and downwind).

In addition to requiring areas to show 3 years of ambient data with no violations, current policy requires areas to show that the SIP for the area has been fully implemented and that the planned emission reductions have occurred. (The EPA will consider requests for redesignations where full implementation has not occurred if the State provides legally enforceable compliance schedules for those sources not yet in compliance.) This requirement stems from EPA's obligation, implicit in sections 107 and 171, to assure that an area's air quality improvement is not a temporary phenomenon but rather the result of permanent reductions achieved by implementation of its approved plan. The EPA will also review available NMOC monitoring data to assess whether those air quality trends reflect actual changes in the emissions inventory.

The EPA is proposing to require States to demonstrate that the emission reductions and the resulting attainment inventory level (see discussion following) will be maintained into the future.[57] Although EPA recognizes that long-term growth projections can be highly speculative, States will be required to use the best available information to project growth and related emissions as far as reasonable into the future. A minimum future projection of 10 years from the redesignation will be required. The EPA will provide guidance on projecting emissions and other aspects of developing a maintenance plan. The air pollution control requirements that will apply to that growth should be considered in determining what the resulting emission level will be.

All EPA-approved attainment strategy requirements are in effect during the redesignation process and until such time as modified in accordance with established SIP revision procedures. Even though the current NSR regulations allow a potential exemption from nonattainment area NSR requirements for sources wishing to locate in an area designated nonattainment that can demonstrate attainment before the source would start operation, EPA proposed removing this exemption on January 28, 1981 (at 46 FR 8124). The EPA is now considering implementing this rule change in this policy and invites comment on this issue.

b. *Carbon Monoxide.* The EPA proposes to continue the current policy of requiring at least 2 years of ambient monitoring showing no violations of the standard for redesignations to attainment. Also, States must continue to show that the CO control strategy has been fully implemented and the planned emission reductions have been achieved. As with ozone, EPA will consider redesignations even though full implementation has not occurred if the State provides legally enforceable compliance schedules for the source(s) not yet in compliance. In addition, States must show that future growth under applicable control requirements

[55] The EPA policy on nonattainment redesignations is further described in the following memoranda: "Section 107 Designation Policy Summary," April 21, 1983, Sheldon Meyers to Regional Office Division Directors; "Section 107 Questions and Answers," G. T. Helms to Regional Office Air Branch Chiefs.

[56] Determination of reductions needed in attainment areas to reduce downwind transport will depend on the results of regional models.

[57] The requirement to maintain the attainment inventory level in areas which had areawide CO problems will apply to the entire MSA/CMSA. For areas which had only CO hotspot problems, smaller areas (after EPA approval) may be used in determining the attainment inventory level.

(see V.B.2 below) will not cause significant increases in the attainment emission inventory level (i.e., the initial baseline inventory minus the reductions needed for attainment) or otherwise interfere with maintenance of the standard. A minimum future projection of 10 years is required. The EPA will provide guidance on projecting emissions and other aspects of developing a maintenance plan.

In some areas, for CO, States may desire to reduce the coverage of the nonattainment area. The EPA will consider such requests if the State provides air quality data and a detailed modeling analysis showing that areawide or hotspot violations are no longer occurring (and none are projected to occur for 10 years) in the area outside of the proposed nonattainment area (including any designated attainment areas in the MSA/CMSA outside of the proposed nonattainment area). The EPA will no longer consider requests for redefining the CO nonattainment area smaller than the urbanized area because it is clear that vehicles at residences and businesses throughout that area contribute to even localized hotspot CO problems in the area.

2. *Maintenance Strategy Requirements.* Maintenance strategies are needed to ensure that future violations will not occur in an area that has attained the standard and to clearly set forth the procedures for monitoring growth and emission changes and possibly modifying certain elements of the EPA-approved attainment strategy after attainment occurs. The primary components of these strategies are the mechanisms for tracking emissions and air quality after attainment, the requirements related to new source growth, projecting emissions growth, and the need for additional measures and the procedures for modifying the existing attainment strategy (particularly with regard to relaxations of requirements in the approved SIP's).

The emission level that is the basis for redesignation to attainment is called the attainment inventory. For ozone, this inventory is based on actual emissions during the 3-year period corresponding to the 3-year period during which no ambient violations were recorded. For CO, 2-year periods are used. The lowest annual emission level during this period will be considered the attainment inventory. The EPA will provide additional guidance later to States on the development of the attainment inventory.

a. *Tracking Emissions and Air Quality.* The procedures for tracking emissions and air quality after an area has attained the standard will be an extension of the reporting requirements used in monitoring RFP (see section V.A.1.—Aggressive Tracking). Under the maintenance strategy, the States will report less frequently and will focus more on new source growth rather than implementation of additional control measures. However, measuring and improving the effectiveness of regulations and control programs will continue to be important objectives for the States and EPA in the maintenance strategies.

For maintenance, EPA is proposing to require States to provide a report every 3 years summarizing all new source growth and other emission changes from the attainment inventory. The first report will be due 45 months [58] after the end of the year in which (1) the area is formally redesignated (for section 107 designated nonattainment areas) or (2) the area is found to no longer violate the ambient standard (for areas which never had section 107 nonattainment designations or were designated attainment under section 107). The first report will address all emission changes in the year of the redesignation plus the following 3 years. Thereafter, the report will cover emission changes and other related items in subsequent 3-year periods and will be due within 9 months after the end of the 3-year period. This report and all subsequent reports will also document the results of the rule effectiveness evaluations which have occurred in the 3-year reporting period. Appropriate effectiveness levels should be used in developing subsequent emission inventories (see below). The report will document any steps being taken to improve rule effectiveness.

In the 3-year report, the State will provide a complete up-to-date emission inventory. The base year should be the third year of the 3-year reporting period. The inventory should be presented in the form contained in "Emission Inventory Requirements for Post-1987 Ozone State Implementation Plans." The summary of emissions should delineate the emissions growth from new sources or sources which have expanded. Minor and area source growth should be shown, and the State should indicate whether previous assumptions used in projecting minor and area source growth are still appropriate. The sources and magnitude of emissions offsets should be identified. NO_x and CO emission summaries should also be provided.

If the updated inventory reported to EPA is higher than the attainment inventory, the State must take appropriate action to lower its emissions.[59] Within 9 months from the due date for that report, the State must (1) demonstrate that within the calendar year after the end of the last reporting period, the emissions inventory fell below the attainment inventory or (2) submit a SIP revision containing appropriate measures to ensure that the inventory will fall below the attainment inventory as expeditiously as practicable.

The 3-year report from the State should also summarize air quality levels and trends. If an area had been nonattainment for ozone, NMOC and NO_x levels and trends should also be reported. The EPA will develop additional guidance for States to follow in summarizing their air quality data under the maintenance strategies. The EPA is also proposing to require States to project in every other 3-year report (i.e., every 6 years) their expected emissions over the next 10 years. In this report, the State must show that its current SIP is adequate to maintain the standard after attainment. If the SIP measures will not be able to ensure that emissions stay below the attainment inventory level, the State must submit in that report its plan for additional measures to accommodate the growth. The State must commit to implement those additional measures at a rate such that the emission reductions occur before the emission increases from expected growth.

b. *New Source Growth Requirements.* The State must ensure that emissions growth from new sources (major, minor, stationary, mobile) does not interfere with attainment.

Because of the complex processes involved in the formation of ozone, the difficulty in modeling the impact of specific VOC and NO_x sources, and the fact that, with models currently in most widespread use (i.e., EKMA), the exact location of VOC and NO_x sources is not as important as the total emissions within an area, EPA believes that for VOC and NO_x [60] major sources, offsetting emissions from within the area is needed to control emissions growth. The EPA believes that States should have flexibility to use either case-by-case offsets or develop areawide accommodative plans, or both, in developing maintenance strategies.

[58] The 45 months is based on a requirement to report within 9 months of the first 3-year period.

[59] For CO *hotspot* problems, the attainment inventory will be used as an indicator of the potential for additional or recurring CO problems. The State will not have to maintain emissions below the attainment inventory if it demonstrates that the increases are not related to and will not have an effect on the previous problem area.

[60] This requirement applies where NO_x control is part of the ozone control strategy.

Therefore, EPA proposes to allow each State to decide its own approach for addressing emissions growth as long as there are assurances that the attainment inventory level is maintained and provided that the State satisfies other regulatory requirements (e.g., PSD, in areas redesignated to attainment). The State must keep records to show at any one time that the new growth can be accommodated by the SIP.

The paragraphs above address emissions growth from new or modified major VOC sources. To account for minor source and area and mobile source emissions growth, the State must adopt and implement additional control measures to accommodate the increases and keep area emissions below the attainment inventory. The State will have considerable flexibility in developing this part of the maintenance strategy to compensate for emissions growth. For example, the State could address minor point source growth by applying to minor sources the preconstruction review process for major sources and modifications. Alternatively, the State might adopt additional measures, such as further controls, mitigation fees, or other innovative approaches, that will provide a margin of growth for minor point, area, and mobile sources. The State must show, however, that its measures will produce the necessary emission reductions within the same period or before the emissions growth occurs (whether from minor point, area, or mobile sources). Some of these measures will have been identified in the demonstration accompanying the request for a redesignation to attainment. Others may be developed later and submitted as SIP revisions, so long as they create the emission reductions prior to the emissions growth.

The EPA believes that it may also be reasonable to ensure maintenance of the CO ambient standard in an approach similar to the one discussed above for ozone. Although "hotspot" CO problems have been identified in several areas, these high CO concentrations are often an indication of broader problems associated with significant CO emissions across a larger area. Therefore, EPA is proposing to require CO maintenance plans to (1) ensure that emissions remain below the attainment inventory for an area and (2) periodically (in the 3-year report) assess the effects of new source growth. Exceptions to the first requirement may be allowed if the State demonstrates that its previous CO problem was entirely a hotspot problem and that the emission increases will not cause or contribute to a new hotspot problem.

c. *Modifying the Attainment Strategy.* In general, EPA believes that measures implemented to attain the ambient standard will continue to be needed to maintain the standard. The EPA expects, however, that there may be some cases in which the emission reduction potential of a measure decreases due to a change in the source profile or other technological developments (e.g., more effective new car emission controls). In addition, a State may have other reasons for which it desires to modify the strategy it had developed, adopted, and implemented to attain the standard. Any modification to an attainment strategy would have to be submitted as a SIP revision and approved by EPA before it would affect the applicability of the previously approved SIP.

C. *Requirements for Emergency Episode Plans.* Each State is required to develop an emergency episode plan outlining the steps the State and its sources will take to lower emissions rapidly in the case of highly elevated pollution levels (40 CFR Part 51, Subpart H). The EPA believes that this emergency episode plan should be consistent with and supportive of the proposed policy to ensure that special occurrences will not interfere with the State's efforts to attain the standards and achieve RFP in the interim. Therefore, EPA proposes to require the initial plan submittals from the States to demonstrate that their emergency episode plans are consistent with the requirements of this policy. If a State is unable to provide such a demonstration in the initial submittal due to the need for significant changes in its emergency episode plan, EPA proposes to allow the State up to the due date for the first RFP report to provide the demonstration. The initial submittal must contain a commitment to and description of actions needed to provide this demonstration.

The EPA is proposing that source areas in one State that contribute to ozone exceedances in another State develop emergency episode plans which consider those receptor areas. These plans must include a provision for interstate coordination involving air quality data and quality assurance information.

D. *Conformity of Federal Actions With the SIP.* Section 176(c) of the Act aims to ensure that Federal actions conform with the SIP. This requirement helps to ensure that SIP growth projections are not exceeded, RFP targets are achieved, and air quality maintenance efforts are not undermined.

Section 176(c) of the Act requires all federally approved or financially assisted actions (projects, plans, approvals, assistance, etc.) to conform to the SIP's for the areas in which those actions will take place. MPO's are prohibited from approving any project, program, or plan that does not conform to the SIP for that area. Assurance of conformity is also an affirmative responsibility of the head of each Federal agency.

Due to the existing DOT/EPA Conformity Agreement of June 12, 1980, the conformity approach contained in this section and the more detailed criteria contained in the proposed Policy Statement do not apply to transportation plans, programs, and projects approved by Metropolitan Planning Organizations (MPO's) and approved or funded by DOT. The EPA and DOT will discuss the joint updating and revision of the 1980 Conformity Agreement. Any changes to the 1980 Agreement, following these discussions, will be reflected in a separate rulemaking action by DOT in a revision of 23 CFR Part 770 which will be published sometime in the near future.

Since Congress enacted these requirements, some MPO's and Federal agencies have read the conformity provision to require only that a proposed project be consistent with regulations in the SIP. This narrow reading could allow activities that, while not inconsistent with an actual State or local rule, could cause a NAAQS violation (in the near- or long-term) or be inconsistent with the demonstration of emission reduction progress or of attainment in the approved SIP. Thus, the use of such a narrow reading would pose an essentially unchecked threat to the integrity of the SIP's on which EPA and the States will rely to produce progress and eventual attainment.

The primary purpose of SIP's is to attain and maintain the NAAQS. For this reason, the EPA believes that it must take concrete steps to ensure that federally approved and financially assisted actions conform with the SIP by not causing NAAQS violations. Federal actions should conform to both the SIP regulations and the emission reduction projections demonstrating progress and attainment on which EPA relies to approve new SIP's and to decide on discretionary sanctions. The EPA believes that it already has the authority to establish these safeguards. Section 110(a)(2)(B), which applies to all areas receiving SIP calls, requires SIP's to contain emission limitations, schedules,

and timetables for compliance with such limitations, and "such other measures as may be necessary to ensure attainment and maintenance of such primary or secondary standard * * *."

To ensure that projects, programs, or plans approved by MPO's do not cause NAAQS violations or interfere with timely attainment of the standards (and hence do conform to the revised SIP), EPA will require that each revised SIP explicitly identify direct and indirect emissions expected from projected major Federal actions that the State and MPO expect to occur in coming years. The SIP should document assumptions used in predicting future emissions so that emissions associated with Federal actions can be readily compared to emission projections in the SIP. This should include assumptions on growth that can be readily disaggregated (including population, employment, VMT, and emissions, as appropriate). Beyond that, the SIP must contain a clear definition of the circumstances in which a federally funded or approved project will or will not conform to the SIP. That definition must state that a project conforms to the SIP only if the emissions that it will cause (calculated using assumptions consistent with SIP assumptions) will not bring aggregate emissions for the planning area above the level projected for the area for the relevant timeframes in the SIP's demonstration of emission reduction progress and attainment.

Where existing MPO section 176(c) review procedures ensure that such projects would not cause violations or interfere with timely attainment and maintenance of the air quality standards, the definition of conformity in SIP submittals could simply mirror the definition used by those agencies. For other cases, however, the SIP conformity definition would fill the gap left by the existing procedures. Stated differently, the inclusion of a broad definition of conformity in the SIP will ensure that projects reviewed by MPO's would be evaluated against the appropriate criteria.[61]

The proposed Policy Statement at the end of today's notice contains a more detailed list of the criteria that should comprise the SIP's definition of when federally-assisted projects conform with the SIP.

[61] At least one Federal agency, the Department of Housing and Urban Development, has a separate Federal statute that authorizes the EPA to delegate its responsibilities under section 176(c) to the recipient of Federal approval (and funds) for the project. In such cases, the recipient would need to use the SIP's broad definition of conformity in making the section 176(c) determination.

VI. Maximizing Effectiveness of Existing Program

The policy being proposed today recognizes that the control strategy development process and associated regulatory development are a predictive process, predicated upon technical and socioeconomic assumptions and projections, and often upon developing and implementing new technology and science. The EPA recognizes that, in developing control strategies, control measures, and regulations that must be implemented on a national basis, the potential for varying interpretations and inconsistent application exists.

With regard to current SIP's, EPA believes that variations and inconsistencies between some State regulations and program functions and the requirements of existing EPA policies do exist and, when viewed in total, have a potentially significant effect on whether emissions will actually be reduced to the levels contained in the SIP thus effecting the ability of the SIP to achieve attainment.

These errors and inconsistencies must be reduced and eliminated to allow for the fullest implementation of existing control measures and strategies.

In April of 1987, the EPA Administrator sent letters to 42 State Governors expressing his concern that current SIP requirements may not be adequate to provide for the attainment of the NAAQS for ozone and carbon monoxide. While stating that additional control efforts may have to be undertaken, the Administrator also proposed a three-part process to ensure that current SIP's are achieving the reductions consistent with those to which the States had committed in their SIP's. This three-part process will require EPA to: (1) Review the federally-approved control commitments in the SIP to see that they have now been adopted, (2) review the adopted measures to determine if they are technically adequate and meet minimum national standards, and (3) initiate a comprehensive program to determine whether adopted regulations are being effectively implemented.

In addition to these efforts, EPA has found that a number of SIP's contain various inconsistencies with respect to EPA policy and misinterpretations of national guidance. The EPA proposes to require States to correct these deficiencies and inconsistencies as expeditiously as possible but at least by the time the initial SIP is due (in 2 years from the SIP call). The EPA will work with the various States in identifying specific inconsistencies contained in their SIP's and in developing a schedule for submitting the needed revisions. The EPA is also in the process of upgrading guidance material, developing new guidance where needed, and formulating State-EPA workgroups and clearinghouses to assist the States in improving their overall program effectiveness.

As previously stated, EPA proposes to require the revised SIP's for those areas receiving SIP deficiency notices to include corrections to those portions of their plans that are inconsistent with national policy or have ambiguities that allow for interpretations different from what existing EPA guidance would allow. Appendix D contains a detailed discussion of those inconsistencies and provides EPA's proposed guidance on how States should correct them in their revised SIP's.

Also, Appendix J lists a number of other measures that the States may consider in improving the overall effectiveness of their programs.

Statement of EPA Policy for Approval of Post-1987 Ozone and Carbon Monoxide Plan Revisions [62]

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Introduction

A number of areas in the United States, mainly metropolitan areas, currently have ambient levels of ozone and carbon monoxide (CO) in excess of the national ambient air quality standards (NAAQS). A list of these areas can be found in Appendix A. The Environmental Protection Agency (EPA) believes that many of these areas will not be able to attain the air quality

[62] The following is a complete statement of the policy elements discussed previously in this notice. The final version of this Policy Statement will appear in EPA's publication of a final notice on post-1987 ozone and CO plan revisions.

standards by December 31, 1987, the latest date by which State implementation plans (SIP's) established under Part D of the Clean Air Act (the Act) were to provide for attainment. The following policy will govern post-1987 planning for the areas that were not able to attain the standards by that date and have been notified by EPA that their SIP's are substantially inadequate, or that their pending SIP submittals are not approvable. The EPA intends this policy to apply to planning even in areas whose SIP's are found substantially inadequate subsequent to the round of SIP calls expected in 1988. The **Federal Register** notices and documents in Appendix H provide useful background for this policy.

The requirements set forth in this policy are designed to result in State plans that attain the ozone and CO standards as expeditiously as practicable and by a date certain. The policy addresses the need for State and local agencies, in designing their control strategies, to develop and implement stringent and innovative measures for the control of volatile organic compounds (VOC's), nitrogen oxides (NO_x), and CO. Attainment of the ozone and CO air quality standards in an area will require the implementation of nationally implemented measures and EPA-prescribed measures, as well as locally developed and implemented measures designed specifically for that area's needs. The area must also account for the contribution of ozone and its precursors from the surrounding areas.

All designated nonattainment areas will be required to achieve reductions in the near term from implementation of measures previously required in their Part D SIP's. Areas that cannot demonstrate attainment in the near term will become subject to a construction moratorium and, to avoid additional sanctions, will be required to demonstrate that they will achieve at least a minimum level of reduction in emissions periodically until attainment can be demonstrated.

While a large portion of this policy discusses additional requirements for ozone and CO control, EPA also points out the potential for improving and maximizing the effectiveness of both existing and future measures. The EPA has found through its program of auditing State performance that a number of inconsistencies and misinterpretations of national policy exist. These discrepancies can result in predicted emissions reductions not being fully realized and therefore attainment of the standards being delayed. The EPA will, through this policy, delineate specific areas of concern, and suggest ways to correct or alleviate these existing problems. In addition to encouraging maximum existing program effectiveness, the policy will reiterate the requirements for adopting regulations to apply reasonably available control technology (RACT) consistent with the EPA Control Technique Guideline (CTG) documents published for the categories of sources in Groups I, II, and III, and major non-CTG sources, where applicable. The statement also discusses the requirements for implementing an enhanced vehicle inspection/maintenance (I/M) program (where there is a final decision to require enhanced I/M). Beyond these measures and the benefits to be derived from the Federal Motor Vehicle Control Program (FMVCP) and EPA's proposed regulations to require onboard VOC controls for automobiles and the control of gasoline vapor pressure, EPA will require each area to incorporate the necessary type and mix of controls needed to demonstrate attainment of the NAAQS and to meet applicable rates of progress. The EPA recognizes that a large reduction in VOC emissions has already occurred in many urban areas due to the FMVCP, I/M, and RACT controls on stationary sources. Although mobile source emissions will continue to be reduced over the next few years, the benefit may be diminished in the mid-1990's by completion of fleet turnover to vehicles with more stringent emissions controls if there is continued growth in vehicle miles traveled (VMT). With these events in mind, EPA believes many State and local agencies will have to select and commit to implement transportation-related control measures in their attainment strategies to obtain sufficient emission reductions.

A new concept to account for planned reductions from control measures is being proposed through this policy. Historically, States assumed in their planning that emission-limiting regulations would be 100 percent effective, meaning that the regulatory agency could take full credit for the reduction in emissions that the implementation of a particular emission regulation would theoretically achieve. Experience in compliance monitoring and rule effectiveness evaluation shows, however, that regulations are often implemented on less than a fully effective basis, due to such factors as the failure of some sources to comply, periodic failure of control equipment, plant upsets, leaks, and spills. Also, projections of reductions in the SIP can be inaccurate and may overstate the effectiveness of control measures. Based on this, EPA requires that an effectiveness level of less than 100 percent must be factored into the SIP demonstrations. The EPA will also require States to measure effectiveness levels of existing regulations and use these levels in planning for expected reductions.

For those areas unable to demonstrate attainment in the near term, the plan must also commit to providing periodic updates to the SIP on a 6-year frequency. These updates are to validate control measures implemented during the previous 6 years and update and refine the commitments planned for the next 6-year segment. In addition to the "segment" plan requirements, the SIP must commit to reasonable further progress (RFP) reporting. These RFP reports are to provide an annual summary of results and status of the control strategy. The SIP must also commit to providing a complete emissions inventory update, revising or confirming previously established emissions growth and reduction projections, on a triennial basis.

The SIP must also commit to maintain the ambient standards once they are attained. For areas demonstrating near-term attainment, EPA requires SIP's to provide sufficient control measures to ensure continued maintenance. The EPA will provide for maintenance by requiring the SIP's to contain commitments to take actions necessary to maintain emissions at or below the level associated with attainment (the "attainment inventory"), even after attainment is reached.

The requirements set forth in this policy involve technologically complex issues. In addition to establishing the framework and discussing detailed requirements for State and local action, the policy mentions a wide range of guidance EPA will provide to assist in developing an approvable plan. Appendix H of this notice includes a list of guidance material that is available to assist the States in the development of their strategies and SIP revisions. The EPA will, from time to time, add additional guidance to this list, in order to provide the latest available information to the States.

I. Affected Areas

All areas with ozone or CO design values in excess of the NAAQS will receive a SIP call if there has not been a SIP disapproval for that area. Areas with disapproved SIP's must also meet

the requirements of this policy.[63] Any area with monitored violations or whose SIP has been proposed for disapproval will be referred to herein as a nonattainment area. In addition, all future areas requesting redesignations under section 107 will be subject to the maintenance and redesignation requirements of this policy (see section V: Measuring and Assuring Progress and Maintenance).

A. *Areas Violating the Ozone NAAQS.* Where a nonattainment area is located within a Metropolitan Statistical Area (MSA),[64] the boundary of the MSA must be used as a planning area for the purpose of constructing the base emissions inventory and projecting emission reductions from VOC and NO_x sources. Where the MSA is included within a CMSA, the boundaries of the CMSA must be used as the planning area. The EPA will not accept plans based on attainment demonstrations that do not fully account for emissions in this planning area. Where a previous SIP has used a planning area (or section 107 designated nonattainment area) larger than the MSA/CMSA, that larger area should continue to serve as the planning area.[65] Accordingly, EPA intends its SIP calls to apply to the larger of these areas. In addition, plans must account for emissions from large sources located outside, but within 25 miles, of the boundary of the MSA/CMSA. Some non-MSA counties adjacent to a nonattaining MSA/CMSA have design values for ozone in excess of the standard. For planning purposes, these adjacent counties that have monitored ozone violations are to be included in the adjacent MSA/CMSA planning area.

The EPA recognizes that many of the MSA/CMSA's involve more than one State and therefore the level of coordination and interagency discussions and agreements are heightened significantly. While each State associated with a particular MSA/CMSA will be responsible for its portion of emissions inventory information, and adoption and implementation of specific measures and regulations, EPA encourages the various States to participate in a joint planning effort to develop a single strategy for the MSA/CMSA. The EPA Regional Offices will work with the States and local metropolitan planning organizations in developing the various aspects of the control strategy.

Counties that violate the standard but are not within or adjacent to the boundary of an MSA/CMSA shall be defined as isolated rural areas that are either "self-generating" or "nonself-generating." Self-generating areas are those areas that cause or significantly contribute to local ambient levels of ozone. Nonself-generating areas are those areas that do not cause or significantly contribute to local ambient levels of ozone. (See Appendix B for procedures to determine whether a rural area is self-generating.) Nonself-generating areas must identify the upwind area (or areas) within 10 hours travel time believed to be causing or contributing significantly to local nonattainment.[66] For isolated rural areas, the minimum area affected by the ozone portion of this policy is the county in which the monitored violation occurred.

B. *Areas Violating the CO NAAQS.* For areawide CO problems, the boundary of the MSA/CMSA is to be used for purposes of control strategy planning. Where the violation occurs in an area not included within an MSA/CMSA, then, for purposes of control strategy planning, the affected area is the county where the violation was measured. For an area impacted only by "hotspot" problems determined by using procedures in section III.A., EPA will allow the area of nonattainment planning to be reduced to an area commensurate with the scope of the nonattainment problem and its likely solution.

II. Planning Schedules

A. *Basic Schedule for Response to SIP Calls.* The EPA requires all areas receiving ozone or CO SIP calls or final plan disapprovals to revise their SIP's within 2 years of the SIP call or disapproval, whichever is applicable. The planning period, however, will not allow States to modify existing planning or implementation schedules to which they may now be subject. These schedules will remain in effect until and unless the EPA-approved post-1987 SIP (developed in accordance with the provisions of this policy) modifies the schedules. The revised SIP's must meet the 2-year submittal requirement specified in this policy, except that, for the situations involving certain rule adoptions and isolated rural area analyses discussed below in section II.B, those requirements must be satisfied in a supplemental revision due after the initial 2-year period. A draft detailed and comprehensive emissions inventory will be due from all areas within 12 months of the SIP call or disapproval.[67] The EPA will work with State and local air agencies to establish appropriate schedules and milestones to ensure that the plans can be developed and adopted by the submittal deadline.

To ensure that the State and local governments give high priority to the development of the SIP, the Governor, after consultation with principal elected officials of each local government in the affected area, must submit within 3 months of the SIP call a written commitment to develop a SIP revision in accordance with this policy. In addition, within 6 months after the SIP call, the State must review with EPA its schedules, commitments, and progress in the development and adoption processes regarding enhanced I/M, SIP rule discrepancies and inconsistencies, previously required measures (e.g., CTG's), and all necessary measures for satisfying minimum prescribed rate of progress requirements described later in section IV. (See Appendix M for a summary of timing of these and other key policy requirements.)

B. *Schedules for Special Situations.*[68] The EPA will allow additional time for

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[63] EPA has proposed (52 FR 26404, July 14, 1987) disapproval of 14 ozone and CO SIP's. The SIP's for some other areas have already been disapproved, e.g., CO SIP for Albuquerque.

[64] The general concept of an MSA is one of a large population nucleus together with adjacent communities that have a high degree of social and economic integration with that nucleus. These areas are defined and designated by the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, which follows a set of official published standards developed by the Federal Committee on MSA's (45 FR 956, 1/3/80).

The MSA's are defined in terms of entire counties, except in the six New England States where they are defined in terms of cities and towns. If an area has more than 1 million population and meets certain specified requirements, it is termed a Consolidated Metropolitan Statistical Area (CMSA).

[65] For areas previously classified as rural nonattainment areas under the old policy that are classified as urban (MSA) under today's proposal, the minimum planning area will be the MSA.

[66] Isolated rural areas in the Regional Oxidant Model (ROM) domain in the Northeast found to be nonself-generating must delay identification of upwind areas until the Regional Ozone Modeling of Northeast Transport (ROMNET) program results are available.

[67] As explained below, certain isolated rural (non-MSA) areas will not have to submit the emission inventory within this 2-year period.

[68] The EPA is aware that other situations may necessitate SIP revisions after the initial submittal. For example, the ROM analysis for the northeast States, which will not be complete within the 2-year period, will provide a more rigorous regionwide analysis of ozone transport and the effects of control strategies. The EPA believes that currently available models and methodologies will enable the RDM areas to estimate transport effects as well as impacts from their own sources before the ROM results are available, so that an adequate plan can be revised to the extent necessary to incorporate additional controls to reduce downwind impacts. The EPA will work closely with States to ensure that SIP revisions based on these updated analyses are made expeditiously. However, EPA would expect all supplemental revisions arising from the ROM analysis to be accomplished and submitted within 5 years of this initial SIP call or disapproval.

the development and completion of adoption of the control strategy in the situations discussed below. In order for a State to receive additional time to complete development and adoption of its SIP, it must review with EPA within 1 year after the SIP call its need for additional time to complete the development and adoption of the SIP in accordance with the situations discussed below.

1. *Isolated Rural Areas.*[69] The EPA will allow additional time for the SIP submittal from those isolated rural areas experiencing ozone violations which will not have within the 2-year period air quality information adequate to determine whether or not the area is "self-generating" (see Appendix B for procedures for determining whether an area is self-generating). The EPA expects the complete plan revision to be submitted expeditiously and no later than 3 years from the date of the SIP call. The initial SIP (due in 2 years) must contain the minimum RACT requirements for a rural area described in section IV.A., below, as well as the requirements described in section VI. and Appendix D, below. Additionally, the initial SIP must include a schedule for completing the air quality monitoring, self-generation determination, modeling analysis and a commitment and schedule for developing and adopting additional measures which the modeling analysis shows are needed.[70]

Areas found to be nonself-generators must summarize and submit their air quality analyses in the second submittal along with an identification of the upwind area(s) determined to be responsible for violations in the isolated rural area.[71] The EPA will require the upwind area to develop an expeditious schedule for the area to revise its SIP to account for the downwind isolated rural area. This schedule will call for the SIP revision in the upwind area within 1 year of the submittal of the air quality analysis for the isolated rural area.[72]

Areas found to be self-generators will be required to submit a SIP expeditiously which satisfies the same requirements as an area within an MSA. The EPA will require the State to establish an expeditious timeframe for the SIP submittal, which will extend no more than 3 years from the date of the SIP call.

2. *Areas Needing "Long-Term" Measures.*[73] The EPA will allow areas needing long-term measures up to an additional 3 years (from the SIP due date) to complete the formal adoption of all measures. The initial submittal (due in 2 years from the SIP call) for these areas must include: (1) The demonstration of attainment; (2) an identification of long-term measures (with expected emission reduction benefits), along with a description of, and commitment to, the process and schedule to complete all planning, review, and decision steps leading to adequate adoption of those measures; and (3) full adoption of all other measures. The EPA will work with these areas to determine the most reasonably expeditious timeframe for the second submittal, which may extend no more than 3 years from the SIP due date.

Although the initial submittal must identify the long-term measures and commit to the process and schedule for developing and adopting these measures, EPA recognizes that during evaluation and consultation steps, options may need to change. Therefore, EPA will allow the State to substitute measures or modify these long-term measures in the second SIP submittal or subsequent updates as long as the modified or substitute measures yield comparable emission reductions. Furthermore, the emission reductions from the substitute measure must be consistent with the control strategy in showing that applicable rates of emission reduction progress will be achieved.

III. Requirements for Modeled Demonstration of Attainment

A. Models

The input data and assumptions used in ozone and CO models must be adequately documented in the SIP.

1. *Ozone.* The preferred model is the Urban Airshed Model. The second acceptable model is the Empirical Kinetic Modeling Approach (EKMA).

At a minimum, EPA requires that areas use the city-specific EKMA approach. The EPA will not approve plans based on linear or proportional rollback techniques. The EPA's guidance for EKMA is contained in "Guideline for Use of City-Specific EKMA in Preparing Post-1987 Ozone SIP's" (see Appendix H). Appendix I contains data base requirements for EKMA and a brief description of the model.

Areas should not use the wind trajectory analysis, previously known as Level II, because of poor past performance. The EPA's guidance on EKMA has been revised to be more explicit for using wind data in EKMA.

The EPA has also revised its guidance to include updated methods for estimating future ozone, nonmethane organic compounds (NMOC), and NO_x transport levels for use in EKMA, which should result in more realistic assumptions concerning reductions of transported ozone.

Use of models other than the Urban Airshed Model or EKMA must be approved by EPA prior to a commitment by the State to its use. Guidance for the Urban Airshed Model is contained in "The SAI Airshed Model Operations Manual," in "Guideline on Air Quality Models (Revised)," and in "Guideline for Applying the Airshed Model to Urban Areas" (see Appendices H and I). The EPA will not allow areas to delay submittal of the attainment demonstration because of time or resource complications resulting from the use of Urban Airshed modeling.

2. *Carbon Monoxide.* States should first determine the scope of the problem, then choose an appropriate model.

The EPA presumes that hotspots lacking any significant areawide contribution are: (1) Limited in number, (2) isolated points of traffic congestion, (3) typically found in areas of relatively low population, and (4) solved through the application of short-term control measures (within 5 years of the SIP due date). If after using these criteria, the State believes that a problem should be preliminarily characterized as a hotspot (or small collection of hotspots) without an areawide contribution, the State first should define an area around the

[69] Defined as counties not included within or adjacent to an MSA. Requirements for non-MSA counties that experience violations and are adjacent to an MSA are discussed above in I.A., "Areas Violating the Ozone NAAQS."

[70] See section IV, "Requirement for Development of Control Strategy" for description of requirements for different types of areas.

[71] Areas that are found to be nonself-generating and that are in the ROM domain will not be allowed to make this identification until the ROM results are available.

[72] Of course, in some cases the upwind areas will already have begun revising their SIP's because of their own nonattainment problem, and may already be accounting adequately in those revisions for effects on all downwind areas.

[73] In this context, long-term measures refer to those which may require complex or extensive planning or review and adoption processes that cannot be accomplished within 2 years. These measures will likely also require considerable time for implementation. As described earlier, areas that cannot adopt enough measures to demonstrate attainment in the short term will become subject to the construction ban. Thus, the following discussion relates to areas that do not show attainment in the short term but are seeking to avoid additional sanctions by adopting measures that will produce attainment by a fixed date in the longer term.

hotspot which contains sources contributing emissions seen by the hotspot monitor, or the model receptor if a hotspot modeling analysis was used. Then, the existence of other likely hotspots in the remaining portions of the county should be determined through monitoring and modeling. The EPA believes that all hotspot control measures can be implemented within the short term (i.e., not later than 4 years after the SIP is due). Hotspot problems requiring longer time periods for correction will be presumed to require areawide measures.[74] Where both hotspot and areawide control measures are applied, the State must perform both hotspot and areawide modeling.

Hotspot Models—For intersections, traffic and emissions should be analyzed using Worksheet 2 of EPA's "Guidelines for Review of Indirect Sources" (Volume 9)—Revised (Second Printing) (see Appendix H) or an equivalent procedure approved by EPA. Dispersion should be modeled using the CALINE3 line source model described in "CALINE3—A Versatile Dispersion Model for Predicting Air Pollution Levels Near Highways and Arterial Streets," 1979. Other models may be used if approved by EPA in accordance with established procedures.

Areawide Models—Either the Urban Airshed Model or RAM are recommended. Guidance for RAM is in "User's Guide for RAM—2nd Edition," 1987. Due to the proportional relationship between CO emissions and air quality, linear rollback also may be used to determine the overall areawide emission reduction percentage needed to attain the NAAQS. Other models, such as APRAC or box models, may be used on a case-by-case basis with EPA approval. The "EPA Guidelines on Air Quality Models" (see Appendix H) or the EPA Regional Office should be consulted for more information on areawide CO modeling.

B. Data Requirements

1. *Ozone*—a. *Geographic Area for Emission Inventory.* As described above, in most cases, EPA will standardize the planning, or demonstration, area for all emission sources as, at a minimum, the boundary of the MSA, or the CMSA (if one exists). In cases where a previous Part D SIP has used a planning area (or section 107-designated nonattainment area) larger than the MSA or CMSA, that larger planning area should be used.

The planning area inventory must include all VOC, CO, and NO_x sources and must represent actual emissions typical of ozone season weekday conditions.[75] Additional requirements are described in the EPA guideline document, "Emission Inventory Requirements for Post-1987 Ozone SIP's" (see Appendix H).

The EPA also requires that States use a 25-mile distance from the MSA/CMSA boundary as a planning guideline and presume that large sources located within this distance may contribute to the nonattainment problem. States must include sources (greater than or equal to 100 tons per year potential to emit [76]) of VOC, CO, and NO_x within this distance in the demonstration area inventory, even if the 25-mile distance extends into another State or MSA/CMSA.

In those instances where a major source is within 25 miles of an MSA/CMSA but resides in an adjacent State, EPA reminds States of the requirements set forth in section 110(a)(2)(E) of the Act. These requirements specify that each State in its SIP shall include provisions adequate to prohibit emissions from stationary sources within the State from preventing attainment in a nearby State. The EPA will review SIP's from States receiving SIP calls to ensure that these requirements are met. A State with a source or sources significantly affecting ambient pollutant concentrations in a nearby State should provide information on the source(s) to the affected State for use in developing the inventory and constructing an attainment demonstration.

If monitoring sites which exceed the ozone NAAQS are located in counties adjacent to, but not within, an MSA/CMSA, EPA will presume that such counties should be treated as extensions of the MSA/CMSA for planning purposes. Such adjacent non-MSA counties should inventory sources as if they were part of the MSA/CMSA, except that the 25-mile planning guideline does not apply to areas outside these adjacent non-MSA counties.

If an area is an isolated non-MSA, the baseline inventory should include at a minimum the county containing the site which exceeds the NAAQS.

b. *Air Quality Data.* Each area must reduce, validate, and summarize in its submittal the most recent 3 years of air quality data available at the time of the notification of SIP deficiency or SIP disapprovals. Generally, this means that all areas receiving SIP calls or disapprovals prior to the summer of 1988 would be required to use data from the 1985, 1986, and 1987 ozone seasons. The EPA would allow 1988 ozone data also to be used in the modeling analysis if the use of such data would not delay the submittal of the SIP.

For EKMA, the data base must meet the requirements described in Appendix I. These requirements and procedures replace those published in the November 14, 1979, **Federal Register** (44 FR 65667), "Data Collection for 1982 Ozone SIP's." Specific and updated monitoring requirements are also described in "Guideline for Use of City-Specific EKMA in Preparing Post-1987 Ozone SIP's."

For the Urban Airshed Model, requirements are specified in "EPA Guideline on Air Quality Models (Revised)," in "SAI Airshed Model Operations Manual," and in "Guideline for Applying the Airshed Model to Urban Areas." A minimum data base to support an Urban Airshed Model application must be determined on a case-by-case basis in consultation with the appropriate EPA Regional Office.

2. *Carbon Monoxide*— a. *Geographic Area for Emission Inventory.* Cities with areawide CO problems should inventory all counties within the MSA/CMSA. Areas whose problems are limited to demonstrated hotspot problems (using procedures described in section III.A.) may inventory smaller areas with the approval of the appropriate EPA Regional Office.

b. *Air Quality Data.* At least one CO monitor must be located in an area representative of expected maximum CO concentrations.

C. *Requirements for Emission Baselines and Projections*—1. *Baselines.* Baseline inventories should be prepared for a 1987 base year. Base year emissions must be on an actual basis, defined as the estimated typical emission factor multiplied by the typical production rate for each source. The EPA will allow States to limit their analysis to reactive VOC emissions.[77]

Previously, States have excluded from modeling 1 or more years of air quality data where emissions changed significantly from one year to the next during the required 3-year period of air quality data. The EPA is eliminating such exclusions. Instead, and in such cases, attainment emissions levels should be calculated by applying the modeled percent reduction for each year

[74] Long-term areawide CO problems are subject to rates of progress requirements (see section IV.B.).

[75] Actual emissions are defined in section III.C. of this policy.

[76] As defined in 40 CFR 51.165(a).

[77] Reactive VOC's are those not listed among the 11 negligibly reactive VOC's (see following **Federal Register** July 8, 1977, 42 FR 35314; June 4, 1979, 44 FR 32042; May 16, 1980, 45 FR 32424; and July 22, 1980, 45 FR 48941).

of air quality data in the base period to the corresponding year's emissions. The overall attainment emissions level is the fourth highest of these levels.[78] This procedure is further described in "Guideline for Use of City-Specific EKMA in Preparing Post-1987 Ozone SIP's."

Base year inventories for ozone in MSA/CMSA and adjacent non-MSA counties exceeding the NAAQS shall individually list all VOC sources with a potential to emit at least 10 tons per year and CO and NO_x sources with a potential to emit at least 100 tons per year. Sources below these amounts should be aggregated by source category. In the 25-mile distance outside the MSA/CMSA, VOC, CO, and NO_x sources with a potential to emit 100 tons per year shall be listed individually. Baseline inventories for sources affected by existing measures must also reflect appropriate effectiveness levels as described below.

2. *Credit for Rule Effectiveness*—a. *Ozone.* For both new and existing rules, EPA will allow States in constructing their emission reduction projections (and, for existing rules with past compliance dates, in constructing baseline emission levels), to assume not more than 80 percent of full effectiveness unless higher levels are adequately demonstrated, as described below. If lower levels are demonstrated, or found through upcoming State/EPA effectiveness studies, the State must use these levels. To assume an 80 percent level without an evaluation, States should be adequately implementing the requirements for improving the effectiveness of existing rules, as described in this notice under "Maximizing Effectiveness of Existing Program," including any programs for future corrective actions.

To assume more than 80 percent effectiveness, the SIP must contain a rule-effectiveness evaluation which meets EPA criteria and which demonstrates that the higher number has been achieved in practice. If such an evaluation has been performed, the SIP may take credit for whatever additional reductions were determined to be appropriate by the effectiveness evaluation. The rule-effectiveness evaluation must be performed on the rule for which credit is claimed and in the area where the rule has been implemented. Guidance on rule effectiveness evaluations is contained in the EPA document "Guideline for Evaluating Effectiveness of VOC Regulations." (See Appendix H)

The EPA expects that reductions will be achieved as a result of corrective actions from rule-effectiveness evaluations. Since neither the amount of this reduction nor the effectiveness level of the rule will be known, EPA will not allow States to assume existing control measures to be more than 80 percent effective in the base year prior to the evaluation. The base year inventory must reflect this assumption.

If evaluations have been performed for existing sources, the base year inventories of such sources must reflect the effectiveness level determined by the evaluation.

b. *Carbon Monoxide.* For both new and existing rules, States are allowed, in constructing their emission reduction projections, to assume not more than 80 percent of full effectiveness unless higher levels are adequately demonstrated, as described below. If lower levels are demonstrated, States must use these levels. In order to assume an 80 percent level without an evaluation, EPA expects States to be adequately implementing the requirements for improving the effectiveness of existing rules, as described in this notice under "Maximizing Effectiveness of Existing Programs," including any programs for future corrective actions.

For a SIP to assume full effectiveness for a future I/M program, it must show that the I/M rules are fully consistent with the assumptions used in calculating the emission reductions in the appropriate MOBILE model, and satisfy the ten elements described in EPA's Final Policy-Criteria for Approval of 1982 Plan Revisions (46 FR 7185, January 22, 1981). For transportation control measures (TCM's), the SIP must show through evaluation or study that the assumptions used to predict future reductions, such as changes in VMT, mode shifts, and speed changes, have occurred from the implementation of the TCM for which credit is claimed.

Unless an effectiveness evaluation has been performed, existing control measures may not be assumed to be more than 80 percent effective in the base year and the base year inventory should reflect this assumption. If evaluations have been performed for existing control measures, the base year inventory for sources affected by existing regulations must reflect the effectiveness level determined by the evaluation.

3. *Projection of Emissions Inventory.* At a minimum, inventory projections must be made for the attainment year. If this is more than 3 years from the base year, interim projections at 3-year intervals must be made of the full inventory. Long-term areas subject to the percent reduction requirements must make the first interim inventory projection 5 years after the base year.[79] These areas should then make 3-year interim projections starting from the 5-year projection and extending to the attainment date. That is, the inventory projections would include emissions for 1992, 1995, 1998, etc.

Emissions from individual sources listed in base year inventories shall be projected individually to the attainment year and shall include any growth or production changes for the source. Interim-year projections for individual sources are also required and are described in the EPA guideline documents "Revised Guidance for Tracking Reasonable Further Progress in Ozone/CO Control Programs" and "Emission Inventory Requirements for Post-1987 Ozone/CO SIP's" (see Appendix H for complete reference).

Projected emissions must be calculated on an allowable emissions basis, which EPA will define as the product of an enforceable emission rate (e.g., pounds of VOC per gallon of solids applied) and the expected typical production rate (e.g., gallons of solids applied per day) in the future year (typical ozone season weekday). Projected emissions must then be adjusted for effectiveness, using procedures described above under "Credit for Rule Effectiveness."

Growth factors used in projecting production rates must be listed for each point source identified in the baseline and adequately documented. Population projections and other forecasts used for determining growth rates and areawide emission estimates must be consistent with population projections developed in accordance with EPA's cost-effectiveness guidelines for wastewater treatment facilities (40 CFR Part 35, Subpart E, Appendix A). Projected year inventories must be developed in accordance with EPA's "Emission Inventory Requirements for Post-1987 Ozone/CO SIP's."

IV. Requirement for Development of Control Strategy

Introduction

Once the State has determined the percent reduction in baseline emissions needed to attain the NAAQS over the relevant period(s) of time, it must

[78] Assuming 3 years of complete air quality data. If fewer than 3 years of complete data exist, then the third or the second highest attainment emissions level must be used.

[79] These requirements are described in section IV.B. Requirements for Attainment Date and Expeditious Attainment.

identify control measures that will meet this requirement, and that will result in attainment as expeditiously as practicable and by a date certain. Implementation of existing and proposed national measures by EPA and affected industries will aid States in meeting the control targets. In the past, due to the imprecision inherent in control targets for ozone, EPA has required minimum reasonably available levels of control of certain types of VOC sources. This policy does not alter those requirements. The EPA shall require that any of these requirements which may not have already been implemented be implemented expeditiously but not later than the end of 1992.

Beyond the national measures and the required State measures, EPA will require minimum rates of progress for areas that cannot demonstrate attainment in the short term. Such areas cannot count the Federal measures or any previously required State measure in determining compliance with the minimum rate of progress.

Areas that can demonstrate attainment in the short term also will be required to demonstrate maintenance for up to 10 years from the SIP due date.

A. *Federally-Implemented Measures, Federally-Prescribed Measures and Technical Support.* Several measures for controlling emissions will be instituted by EPA as national measures. Other measures may be prescribed by EPA for State adoption, and the States will be required to adopt and implement these measures in the near term.

1. *Federally-Implemented Measures.* The States may assume that benefits will continue for the following federally-implemented measure:

(a) The existing FMVCP, which ensures that new automobiles are designed to meet certain exhaust limits.

In addition, States would realize additional benefit from other national measures that EPA has proposed to implement. They are:

(a) Regulations to control Reid Vapor Pressure (RVP) to reduce the volatility of gasoline and thereby reduce evaporative emissions from vehicles (proposed at 52 FR 31274, August 19, 1987);

(b) Regulations to require reductions of automobile refueling emissions through "onboard" carbon canister control technology on automobiles (proposed at 52 FR 31162, August 19, 1987);

(c) Regulations proposed for hazardous waste treatment, storage, or disposal facilities (TSDF) (proposed at 52 FR 3748, February 5, 1987) and other regulations for TSDF now being developed.

2. *Federally-Prescribed Measures.* The EPA requires that all control measures adopted as part of previous EPA-approved SIP revisions remain in effect while the area is violating the NAAQS and until such time as the measures are modified in accordance with established SIP revision procedures. This requirement also applies to previous regulations not specifically required under today's proposed policy, for example, where pre-1987 rural nonattainment areas were required to implement Group I and II CTG's for major sources, but which are now adjacent non-MSA areas and have no new control requirements. In particular, nonattaining areas in the Northeast "corridor" must maintain previously adopted and EPA-approved regulations since many areas in this region might eventually need to employ minimum or additional control measures to solve the Northeast problem.

a. *Stationary Source RACT.* Rules requiring the application of RACT for all sources covered by Groups I, II, and III of EPA's CTG's must be included in urban and self-generating rural ozone nonattainment areas designated in 40 CFR Part 81. Where previously required (see Table I), EPA will continue to require the application of RACT to sources not covered by a CTG that have the potential to emit 100 or more tons per year. Also, an area issued a SIP call because it has newly been found to be nonattainment will be required to adopt the Groups I, II, III CTG source rules for the "central" county(ies) [80] containing the measured nonattainment problem (or, in the case of self-generating rural areas, to the county measuring the non-attainment problem). At a minimum, all nonself-generating rural nonattainment counties are required to adopt RACT for Groups I and II CTG sources which have the potential to emit (uncontrolled) 100 tons/year emissions or greater.

For most areas, the EPA will continue existing policy requirements regarding issuance of any new CTG's. That is, areas subject to post-1987 policy requirements except truly marginal nonattainment areas [81] and isolated rural nonself-generating areas must adopt an appropriate enforceable regulation for each source category covered by a new CTG, presumptively reflecting guidance given by the CTG. Truly marginal nonattainment areas are exempt from this requirement on the beliefs that (1) such areas will attain in the near term due to reductions from federally-implemented measures, pre-1987 requirements (such as CTG's I, II, and III) and enhanced effectiveness of pre-1987 requirements and (2) it is unlikely that such areas could adopt and implement new CTG's in sufficient time to advance the attainment date. As a safeguard, EPA requires these areas to include in their SIP's a commitment that, if attainment is not achieved by the projected date, they will adopt new CTG's (including any new CTG's issued since today's proposal). The regulation must apply as follows: For areas currently designated as nonattainment and for areas redesignated to attainment but measuring violations of the ozone standard, the regulations will apply in the section 107 designated (or previously designated) area, or the control area included in the previously approved Part D SIP, if applicable; for newly found nonattainment areas these regulations will apply to the "central" county(ies). Satisfaction of these requirements requires adoption by each subsequent January of additional regulations for sources covered by CTG's issued by the previous January.

b. *Enhanced I/M.* [82] The EPA has considered the potential for greater VOC and CO reductions from vehicle I/M programs, and believes that substantial VOC and CO reduction enhancement is available for areas with relatively severe and/or long-term nonattainment problems. [83] The EPA, therefore, is considering a variety of alternative approaches with respect to enhanced I/M. One option is not to establish a specific enhanced I/M requirement but instead, to allow States to consider enhanced I/M, along with other measures, in deciding how to meet the 3 percent average annual reduction requirement included elsewhere in this policy. Another option is to require long-

[80] As defined by the Bureau of the Census, a central county has at least 50 percent of its population residing within the urbanized area.

[81] As defined in section IV.B., truly marginal nonattainment areas are those with design values below 0.16 ppm ozone (0.155 ppm where data are reported in 3 decimal place) or 17 ppm CO and able to demonstrate attainment in the short term by relying only on emission reductions from (1) federally-implemented measures, (2) measures required for the area in EPA's pre-1987 guidance, and (3) other measures adopted by the State and approved by EPA on or before publication of today's proposal.

[82] The EPA is considering a variety of options regarding enhanced I/M, including establishing a specific enhanced I/M performance level for some nonattainment areas as well as relying on the 3 percent reduction requirement to force consideration of enhanced I/M. At other places in this document, the distinction between these options may not always be expressed, but is intended through this policy.

[83] A long-term nonattainment area is an area where attainment will not be demonstrated within 3 years of the SIP approval date [period prescribed in section 110(a)(2)(A)].

term urban ozone and CO nonattainment areas to implement changes to their I/M programs to raise the performance level (i.e., the VOC and/or CO reduction effectiveness) of their programs well above that of the basic I/M requirement.

If a separate enhanced I/M requirement is established, the urbanized portions of SIP call areas with ozone design values of 0.16 parts per million (ppm) or above and/or CO design values of 17 ppm or above ("severe nonattainment areas") will be considered to be subject to this requirement.[84] (For determining areas subject to this requirement and other requirements employing these "cutpoints," EPA will use the rounding convention that values ending in 5 through 9 round up, and values ending in 1 through 4 round down. Hence, an ozone design value of 0.155 ppm becomes 0.16 ppm and a CO design value of 16.5 becomes 17 ppm.) Also, under the option being considered, an area with design values below these levels would be required to implement enhanced I/M if the modeled attainment demonstration for the area shows that it is a long-term nonattainment area.[85] Urbanized areas with a population less than 200,000 would be exempt from these requirements for enhanced I/M. Such areas could still use enhanced I/M reductions to meet attainment or show RFP if they desire.[86]

Rather than require States to adopt specific enhancements from any particular categories of possible improvements, EPA would define the enhanced I/M requirement, if adopted, in terms of a numerical performance level which may be achieved by any combination of program elements. The specific numerical performance level EPA is inclined to select and other pertinent information are discussed in Appendix E.

For an enhanced I/M requirement, if adopted, EPA is planning to retain the urbanized area as the base for geographic coverage. Emission reductions obtained from vehicles outside of the urbanized area but within the MSA/CMSA would not count toward meeting the enhanced I/M performance level, if adopted, however, but would assist the area in meeting its overall emission reduction requirements for the MSA/CMSA.

3. *Technical Support*— a. *Alternative Control Technology Documents.* From time to time, it may be appropriate to publish documents that provide technical information about the control of individual source categories. The documents would identify the emission control technologies that are available for a particular source category along with information on process operation, control efficiency, costs, and other impacts of control. A State could use this information as the basis for an emission limit based on the control technology that is most appropriate given the local needs and circumstances. The ACT document would not specify a presumptive RACT nor a minimum level of control that would be required.

b. *Control Technology Center.* The Control Technology Center (CTC) is a program that can provide technical assistance to State and local agencies on individual problems that pertain to control technology and source testing. A hotline has been established to respond to requests for assistance and provide a quick response to questions. Callers will be put in contact with EPA engineers who have the most knowledge about the topic in question. The CTC hotline provides access to available expertise in both the Office of Air and Radiation and the Office of Research and Development, whichever can best fulfill the needs when an individual request for assistance occurs. This service is available to all State and local agency staff. The CTC hotline number is (919) 541–0800.

B. *Requirements of Expeditious Attainment Dates and Reasonable Progress.* The EPA will approve only those post-1987 SIP revisions that demonstrate attainment of the ozone and CO standards within 3 years of the date of EPA's approval [with a possible 2-year extension under section 110(e)]. Thus, EPA will impose the applicable construction ban in any designated nonattainment area lacking such a demonstration.[87] Areas that cannot demonstrate attainment within the 3- or 5-year period could also become subject to other sanctions if they fail to make reasonable efforts to submit a plan showing attainment by a date suitable for the area, and reasonable progress in the interim. The following discussion describes the requirements for progress and attainment dates for both long- and short-term nonattainment areas.

1. *Areas Demonstrating Attainment Within the 3-Year Period.* As indicated above, the required attainment dates for post-1987 planning are keyed to the date EPA approves the SIP revision [see sections 110(a)(2)(A) and 110(e)]. For purposes of planning, EPA suggests that States developing plans to produce attainment in the short term after 1987 assume that EPA's review and approval of their plans will be complete within 1 year from the date the plans are due. This would mean that, to receive approval, the plans would have to demonstrate attainment within 4 years of the date the plans are due [1 year for EPA approval plus the 3-year period in section 110(a)(2)(A)].

Consistent with section 110(a)(2)(A) and, for Part D areas, section 172, EPA will require the SIP's to demonstrate attainment as expeditiously as practicable, even if that date would arrive before the end of the 3-year period. The EPA will assume that short-term nonattainment areas that apply the applicable minimum control measures (no later than the end of 1992) described in the preceding section are employing all "practicable" measures. Thus, only if those measures, combined with the relevant federally-implemented measures, would advance an area's projected attainment date from the 3-year date would EPA require the area's SIP revision to show attainment by that earlier date.

Plans for areas that are still subject to the Part D planning requirements must also, as required by section 172(b)(3), be adequate to produce RFP. This means that they must, as required by the definition of RFP in section 171(1), produce "annual incremental reductions" in emissions, including "substantial reductions in the early years following approval" of their plans, sufficient to provide for timely attainment. Plans for these areas should demonstrate that their control strategies

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[84] "Urbanized area" is an area defined by the Bureau of the Census according to specific criteria, designed to include the entire densely settled area around each city. An urbanized area must have a total population of at least 50,000. The urbanized area criteria define a boundary based primarily on a population density of at least 1,000 persons per square mile, but also include some less densely settled areas within corporate limits and such areas as industrial parks, railroad yards, golf courses, and so forth, if they are adjacent to dense urban development.

[85] Of course, areas that received an attainment date extension under Part D must implement at least the basic I/M program required by section 172(b)(11)(B) of the Act even if they can demonstrate near-term attainment without such a program. Similarly, areas that were required by EPA's 1984 guidance on the correction of Part D SIP's to adopt a basic I/M program (because of the inability to demonstrate attainment otherwise by the end of 1987) must implement a program of at least that stringency even if they can demonstrate near-term attainment without it.

[86] RFP (for some areas called the "reasonable efforts progress requirements) is described in section IV.B.

[87] For ozone nonattainment areas, the ban would apply to major new sources and major modifications of existing sources of VOC's, as defined at 40 CFR Part 52 (see, specifically, 40 CFR 52.24). For CO nonattainment areas, the ban would apply to major new sources and major modifications of existing sources of CO.

will provide for attainment as expeditiously as practicable. Such demonstrations should show that earlier implementation of control measures would not significantly advance the attainment date.

As a means to ensure timely attainment, EPA will require all areas (including those with short-term demonstrations) to achieve their required emission reductions at a minimum rate (described below) unless the area truly has a marginal nonattainment problem.[88] The EPA will define an area's problem as truly marginal if the area has a design value below 0.16 ppm ozone or 17 ppm CO and the area can demonstrate attainment in the short term by relying only on emission reductions from (1) federally-implemented measures, (2) measures required for the area in EPA's pre-1987 guidance, and (3) other measures adopted by the State and approved by EPA on or before publication of today's proposal. In all other cases, the area must achieve emission reductions from an adjusted base year inventory at an average rate of at least 3 percent per year commencing the year of the SIP call. For this purpose, the base year inventory would be adjusted by subtracting from it the emissions that would have been eliminated by the end of 1987 if the area had implemented all of the applicable requirements of EPA's pre-1987 policies and the portions of the area's SIP that were approved at or before the SIP call or overall disapproval. (See Table I, "Summary of Ozone and Carbon Monoxide SIP Requirements" in discussion of policy issues.) Reductions occurring in the period before the date the SIP is due, but after the base year, will be creditable (i.e., they are creditable if they are not included in one of the three categories listed above) toward the annual reduction requirement. All reductions creditable toward the 3 percent annual reduction requirement must be derived from enforceable regulations or other enforceable measures. Any reductions which are counted toward the requirement and are due to turndowns in production (or shutdowns) must be submitted as SIP revisions and be federally approvable. Emission reductions from measures which are included in the "test" for truly marginal are not creditable toward the 3 percent requirement. As discussed below under "Areas That Cannot Demonstrate Attainment Within the 3-Year Period," the first opportunity to assess compliance with this requirement will be for the period 1988–1992, reported on in 1993. For example, an area needing emission reductions of 17 percent (beyond the reductions from measures listed above for the "marginal test"), would have to achieve reductions of 15 percent by the end of 1992 and the remainder thereafter at an average rate of 3 percent per year until attainment (i.e., achieve the remaining 2 percent by the end of 1993). An area needing additional reductions of, say, 7 percent, would be required to achieve those reductions by the end of 1992.

In the above demonstrations of attainment, the areas must account for any growth in mobile or stationary source emissions expected to occur between the base year and the attainment date. If reductions due to turndowns in production (or source shutdowns) are used to demonstrate attainment, or are used to meet the 3 percent annual reduction requirement, they must be submitted as SIP revisions and must be federally enforceable.

The EPA also will require areas that can demonstrate near-term attainment to show that their plans will provide for maintenance of the standards well into the future despite the emissions growth projected to occur. Plans for these areas must contain projections of emissions at least 10 years from the SIP due date and commitments and schedules for any additional measures that may be needed to ensure maintenance of the standards. This requirement will also apply to any area with a projected attainment date before the end of 1995.

Areas projecting near-term attainment must include in their SIP's a commitment that, if EPA finds that they do not actually attain the standard by their projected attainment dates, they will meet the additional requirements including the adoption of enhanced I/M and the achievement of an average 3 percent emission reduction annually (if not already required) commencing the calendar year when EPA makes the finding. These areas will also be subject to whatever additional future requirements EPA ultimately finds are needed for long-term areas to provide for expeditious attainment.

The EPA will approve plans that meet the requirements of this policy for demonstrating near-term attainment of the ambient standards.

2. *Areas That Cannot Demonstrate Attainment Within the 3-Year Period.* As described above, areas subject to the construction ban because they cannot demonstrate attainment of the standards by the end of the 3-year period set forth in section 110(a)(2)(A) will be able to avoid the additional discretionary sanctions if they demonstrate reasonable efforts to submit adequate plans. The EPA will define such efforts as the submittal, according to the planning schedule described earlier, of a plan that will produce reasonable progress toward attainment by a fixed date suitable for the area. As described below, the "reasonable efforts" attainment date for each area will depend on the degree of progress made each year. For that reason, the discussion below focuses first on the amount of progress EPA will regard as reflecting reasonable efforts for each pollutant, and then on the attainment date that would reflect such efforts.

a. *Progress Requirements*—i. *Ozone.* For ozone, EPA intends to define a "reasonable efforts" level of progress for an area as an average annual emission reduction of at least 3 percent of an adjusted base year (typically 1987) emissions inventory for the demonstration area, commencing the year of the SIP call. As in the case of the progress requirements for non-marginal nonattainment areas with short-term attainment dates, States cannot credit toward the 3 percent any reductions from (1) the federally-implemented control measures, (2) measures required for the area in EPA's pre-1987 guidance, and (3) other measures adopted by the State and approved by EPA on or before publication of today's proposal. For this purpose, the base year inventory would be adjusted by subtracting from it the emissions that would have been eliminated by the end of 1987 if the area had implemented all of the applicable requirements of EPA's pre-1987 policies and the portions of the area's SIP that were approved at or before the SIP call or overall disapproval. (See Table I, "Summary of Ozone and Carbon Monoxide SIP Requirements" in discussion of policy issues.) Reductions occurring in the period before the date the SIP is due, but after the base year, will be creditable (i.e., they are creditable if they are not included in one of the three categories listed above) toward the annual reduction requirement. All reductions creditable toward the 3 percent annual reduction requirement must be derived from enforceable regulations or other enforceable measures. Any reductions which are counted toward the requirement and are due to turndowns in production (or shutdowns) must be submitted as SIP revisions and be federally enforceable.

In general, EPA believes that the earliest practical time to assess

[88] As stated above in section IV.A., any area with a design value at or above 0.16 ppm for ozone or 17 ppm for CO must also implement an enhanced I/M program.

compliance with the 3 percent annual requirement will be the fifth year from the SIP call: 2 years for SIP development and submittal and 3 years for source compliance. Therefore, the State annual progress report (discussed below in section V.A.) for 1992 (due in 1993) must show that creditable emissions of at least 15 percent of the base year inventory (an average of 3 percent per year in 1988–1992) have been achieved. Thereafter, each 3-year inventory updates (see section V.A.) must show that an additional 9 percent emission reduction has been achieved.[89]

So long as federally-implemented measures continue to achieve a net emissions reduction, considering growth in sources subject to those Federal measures, the State will not be required to account for such growth in meeting the 3 percent requirement. However, States must account for all other source growth during this period. Once the Federal measures no longer provide a net benefit, all growth, including that from sources affected by Federal measures, must be factored into the 3 percent requirement.

Areas that cannot demonstrate attainment within the 3-year period in section 110(a)(2)(A) may seek to avoid the construction ban by demonstrating attainment within the extended period allowed by section 110(e). As indicated earlier, that section permits a 2-year extension of the attainment date only if:

(a) One or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plans which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such 3-year period, and

(b) The State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the 3-years cannot be achieved.

The "available alternatives" in paragraph (a) are defined as only those that are "reasonably available" within the meaning of that term in paragraph (b). The "reasonably available alternative means" of meeting the standard is defined as the set of measures and the emission reduction percentage described above as applicable to other long-term ozone nonattainment areas. Thus, if a State can demonstrate that those measures will not produce attainment within the 3-year period and the State actually adopts and implements those measures in that period, it will be eligible for the 2-year extension. The State would not be subject to the construction ban if it could demonstrate attainment in the 2-year period.

ii. *Carbon Monoxide.* For long-term CO nonattainment areas, EPA defines "reasonable efforts" as two sets of measures—one for hotspots and one for areawide problems.

For hotspots, defined for these purposes as localized problems with localized solutions (such as traffic changes at the hotspot locations), EPA will require the State to include in its SIP revision enforceable commitments (1) to implement the localized solutions for all currently known hotspots by the end of the 3-year period and (2) for all hotspots identified for the first time within that period or thereafter, to implement the localized solutions within 3 years of the identification.

For areas that have areawide CO problems, "reasonable efforts" are defined as, in addition to any hotspot requirements, an average annual emission reduction, resulting from measures other than (1) the federally-implemented control measures, (2) any measures required for the area in EPA's pre-1987 guidance, and (3) other measures adopted by the State and approved by EPA on or before the date this policy was proposed, of at least 3 percent of an adjusted base year emissions inventory, adjusted as described above for ozone commencing the year of the SIP call. A list of available measures that States should consider in deciding how to meet the percent reduction requirement appears in Appendix C.

All reductions creditable toward the 3 percent annual reduction must be derived from enforceable regulations or other enforceable measures. Any reductions which are counted toward the requirement and are due to turndowns in production (or shutdowns) must be submitted as SIP revisions and be federally approvable.

As stated above for ozone, generally the earliest practical date to assess compliance with the 3 percent reduction requirement will be the fifth year after the SIP call. Therefore, the State annual progress report (see discussion below in section V.A.) for 1992 (due in 1993) must show that creditable emission reductions of at least 15 percent (an average of 3 percent per year in 1988–1992) have been achieved. Thereafter, the 3-year inventory update (see section V.A.) must show that an additional 9 percent emission reduction has been achieved.[90]

So long as federally-implemented measures continue to achieve a net emissions reduction, considering growth in sources affected by those Federal measures, States will not be required to account for such growth in meeting the 3 percent requirement. However, States must account for all other source growth during this period. Once the Federal measures no longer provide a net benefit, all growth must be factored into the 3 percent requirement.

As in the case of ozone, EPA will use the requirements described above in Table I as its definition of "reasonably available alternative means," for the purpose of its decisions on whether to grant extensions to CO nonattainment areas under section 110(e).

b. *Attainment Dates.* The attainment dates that EPA believes will reflect "reasonable efforts" for long-term ozone and areawide CO nonattainment areas are the dates on which attainment of the relevant standard is projected to occur (i.e., the projected emissions inventory is equal to or below the inventory level needed for attainment) if the required level of progress is achieved. Thus, the applicable "reasonable efforts" attainment date for an area will turn on the percent reduction required. Procedures (including a worksheet) describing how States should determine attainment dates for both short-term and long-term areas are contained in Appendix K, "Determining Attainment Dates." For areas demonstrated to be limited to CO hotspot problems and their solutions, the attainment date is the date (presumed to occur within the 3-year period) by which all necessary hotspot control measures will be implemented.

C. *Measures Selected By The States—1. Stationary Source Control Measures.* Several large point source categories of VOC emissions have not been covered by CTG's, yet are likely amenable to control. States which need large VOC reductions should consider developing regulations for these sources since it may be difficult or impossible for States to achieve the required emissions reduction if such sources are left uncontrolled.

In addition, area sources of VOC can be major contributors to emissions. Such sources have often not been controlled

[89] Where applying an annual 3 percent reduction results in expected attainment between 3-year projections, the reduction remaining to be achieved after the previous 3 year-period must be achieved by the year in which attainment is projected.

[90] Where applying an annual 3 percent reduction results in expected attainment between 3-year projections, the reduction remaining to be achieved after the previous 3-year period must be achieved by the year in which attainment is projected.

in the past, and offer an opportunity for significant reductions.

Appendix C lists a number of specific industries and area source categories which States should examine to see if reductions may reasonably be achieved from those types of sources. This list is neither exhaustive nor prescriptive and States should thoroughly examine other potential measures in their local areas to determine what emission sources are available for control in order to meet the required reduction.

2. *Air Toxics Considerations.* Under today's notice, State agencies are encouraged to consider air toxics in selecting control measures for their ozone SIP's. The EPA presumes that State plan submittals will be coordinated between the air toxics and ozone programs. Such coordination will be considered by the EPA during review of SIP revisions. The EPA is developing guidance to assist States in their assessment of air toxics benefits of possible ozone strategy measures.

3. *Transportation Control Measures (TCM's).* The EPA believes that many metropolitan areas, of necessity, will have to examine TCM's and select those measures that contribute to meeting the required rate of progress and help to offset expected mobile and stationary source growth, and to the extent necessary to provide for attainment and maintenance. The TCM's in SIP's must be submitted in an enforceable adopted form (see discussion below regarding requirements for adoption). Appendix C contains some TCM's that States should examine to see if reductions may reasonably be achieved. The Appendix C TCM's are those that have been evaluated or implemented in certain areas, included in Part D SIP's, or that EPA believes may be necessary in areas needing large reductions in mobile source CO, VOC, or NO_x emissions.

4. *Requirements for Adoption of Transportation-Related Control Measures.* The TCM's are to meet the following criteria in order to be considered as properly adopted. The SIP must contain the following:

(1) A complete description of the measure and its estimated emission reduction benefits must be provided;

(2) Evidence that the measure was properly adopted by the jurisdiction(s) with legal authority to commit to and execute such program (e.g., Attorney General's certification of adoption);

(3) Evidence that funds to implement the measure are obligated or on an acceptable schedule;

(4) Evidence that all necessary approvals have been obtained, from all appropriate governmental entities, including State highway departments where applicable;

(5) A schedule for completion of planning, engineering, development, start of construction, if applicable, and for start of operation which has been adopted by the implementing agency in an appropriate enforceable form; and

(6) A description of the monitoring program to assess the effectiveness of the measure and to allow for in-place corrections or alterations to obtain the full effectiveness.

The EPA recognizes that the 2 years allowed for submission of the initial plan may not be sufficient to allow for the proper adoption of long-term measures. Where complete, "up front" adoption is not possible, EPA will require that the initial submittal identify the measures and schedules for completing the adoption process, estimate expected emission reduction benefits, and indicate when such reductions are to occur.

Along with the identification of the measures and schedules, the initial submittal is to include: (1) A description of the process to complete all planning, funding, review, and decision steps leading to adoption; (2) a schedule of those steps: (3) a commitment to carry out the process leading to the adoption of these or appropriately substituted measures.

The schedule must commit to implement the measure as expeditiously as practicable consistent with the time required to advance the measure through all planning and programming steps to full scale implementation, including the time required for construction, if applicable.

For measures unable to be fully adopted, EPA will require that the adoption of the measure identified in the initial submission be completed in the most expeditious manner but not to exceed 3 additional years (see section 11, Planning Schedules). The initial SIP submittal must include legal commitments by all agencies, boards, etc., responsible for funding, construction, operation, enforcement, and monitoring of the measures. In addition, EPA shall require that the SIP contain a certification by the State Attorney General that the commitments included in the SIP are properly adopted by the jurisdiction with the legal authority to implement the measure.

The EPA recommends that, to the extent possible, the agencies previously designated under section 174 for the preparation of Part D SIP's be retained. However, in all cases, the State must adequately document that a satisfactory process has been carried out pursuant to section 121 for consultation with general purpose local governments, designated organizations of elected officials of local governments, and any Federal Land Manager having authority over Federal land to which the SIP applies.

D. *Role of Nitrogen Oxides* (NO_x). The EPA believes that, in some circumstances, NO_x control may be beneficial in reducing ozone levels. Therefore, States with post-1987 ozone SIP's are required to evaluate locally-implemented NO_x control where the median ambient NMOC/NO_x ratio is equal to or above 10:1. Guidance describing the technical requirements for the evaluations is contained in "Consideration of NO_x Control in Ozone SIP's," EPA, September 1987 (Draft). Upon completion of the evaluation, States may proceed to identify and, if appropriate, implement NO_x measures which will supplement VOC controls and produce progress toward attainment (including ultimate attainment) of the ozone NAAQS as expeditiously as a strategy which did not rely on State-adopted (or locally-adopted) NO_x measures. States implementing NO_x measures must determine a minimum rate of NO_x emission reduction which will result in attainment as expeditiously as a VOC-only strategy.[91] The procedure for this is as follows: (An example demonstrating the application of this procedure can be found in Appendix L.)

1. Determine the modeled VOC reduction target necessary to attain based on a VOC-only strategy and whatever NO_x emission changes are expected if the State implemented no NO_x measures. Using the procedures contained in Appendix K, find the attainment year for the VOC-only strategy at the required 3 percent annual rate of progress.

2. Determine VOC and NO_x reduction targets necessary to attain with a VOC/NO_x strategy, including the NO_x emission reductions expected from the NO_x strategy.

3. Find the required annual NO_x reduction by dividing the reductions expected from locally implemented NO_x measures by the number of years from the date of the SIP call to the attainment date from Step 1. The NO_x reductions (or increases) expected to occur from

[91] For determining compliance with this rate, EPA will not require States to account for growth in sources affected by federally-implemented NO_x measures (i.e., FMVCP) so long as these measures continue to achieve a net emission reduction considering the effects of such growth. However, States must account for all other source growth during this period. After this period, all growth must be considered in determining compliance with the rate.

events other than the locally-adopted measures should not be included in determining compliance with the annual NO_x reduction requirement.

4. Adjust the required annual VOC rate of progress such that the locally-adopted VOC measures plus whatever emission changes projected to occur in nonmobile VOC emissions occur at a uniform rate from the date of the SIP call to the attainment date determined in Step 1.

The annual VOC and NO_x reduction requirements may be rounded to the nearest tenth of a percentage point. As in the case of VOC, EPA will use initially the fifth year from the SIP call, and subsequently at 3-year intervals to determine compliance with these requirements. For this purpose, States must round the 5-year (and 3-year) reduction requirements to the nearest higher percentage point. When attainment is projected to occur before the end of a 3-year period, the balance of the reduction required to attain is due by the end of the year in which attainment is projected.

In addition to the above procedural requirement, measures in an NO_x control strategy must meet all other requirements appropriate for VOC control measures (e.g., measures adoption, tracking, and reporting of compliance).

E. *Control of Transported Ozone and Precursors*—1. *Northeastern States.* The EPA recognizes that the phenomenon of multi-day transport of ozone and its precursors in the Northeastern States significantly complicates efforts of individual States to develop strategies to attain the ozone NAAQS. With a nearly continuous string of closely located urban areas spread over extended distances and political boundaries, this portion of the country will need a region-wide analysis to determine ultimately the collective adequacy of various State control strategies.

Northeastern States need information to estimate inbound ozone and precursors for urban scale models, and to evaluate the effects of both regional and combined urban ozone control strategies on regional ozone and precursor levels. Applications of the EPA-developed ROM and subsequent interpretation of results will provide this information. However, due to the need for the development of a regional emissions data base and multiple strategy assessments, the ROM results will not be available until after the upcoming SIP revisions are due.

While EPA recognizes that ROM results are necessary in determining relative contributions of transported pollutants to ozone exceedances, EPA will not allow a delay in the submittal of the post-1987 ozone attainment demonstrations and revised SIP's for areas affected by ROM. The EPA believes that the Act requires that attainment demonstrations be made using currently available models and data. This means that States must use urban-scale models, with appropriate assumptions of future transported ozone and precursors, to provide city-specific SIP reduction targets. The EPA expects that implementation of control strategies designed to meet these targets will substantially reduce local ozone and precursor levels and, in turn, will reduce transported ozone and precursor levels downwind. Whether these combined urban strategies are adequate to produce attainment must subsequently be tested in urban-scale analyses when the ROM results are available.

Procedures for estimating present and future transported levels of ozone and precursors for use in the EKMA analysis are contained in the revised EPA guidance document "Guideline for the Use of City-Specific EKMA," and in "Consideration of Transported Ozone and Precursors in Regulatory Applications."

2. *Other Areas Affected by Transport.* The EPA considers the nature of the problem in other areas to be generally of a single-day phenomenon confined to a smaller scale and involving fewer States and cities than the Northeast problem, and believes that it can be handled successfully by urban-scale models, such as EKMA and Urban Airshed. Therefore, EPA does not anticipate the need for a regional model in areas outside the Northeast region.

F. *Accounting for Growth.* The post-1987 ozone and CO plans must contain adequate provisions to ensure that future growth will be accounted for and RFP is maintained.[92] The EPA has been considering two possible options for addressing emission increases from new major sources or major modifications to existing sources: (1) Require emission increases to be offset with decreases at other sources, or (2) allow State strategies to provide margins of growth (i.e., growth accommodation) by controlling beyond the federally-prescribed measures and other measures already needed to show RFP. Although an emission offset program may provide more direct control over emissions growth at these sources, EPA believes that areas still subject to Part D of the Act are entitled specifically by virtue of section 173(1) to choose between an offset program and a control strategy which provides a growth accommodation for emission increases. In addition, EPA believes that the post-1987 nonattainment policy should establish consistent requirements for all areas to the extent possible. Therefore, all States including those subject to section 110 [and, specifically, section 110(a)(2)(D)] are allowed to choose between these two approaches for addressing future emissions growth. Where an accommodative approach is chosen, the State must keep records to show at any one time that the new growth can be accommodated by the SIP.

States may also decide on the approach for addressing growth from minor or area sources. An offset program for minor point sources or additional control measures to accommodate growth from minor point sources or area sources could be used to ensure that RFP is maintained.

On a related matter concerning emissions growth in designated attainment areas or unclassifiable areas,[93] EPA is discontinuing its practice of allowing statewide adoption of RACT as a substitute for preconstruction monitoring required under EPA's Prevention of Significant Deterioration program. Nor can the adoption of statewide RACT be used as a substitute for any nonattainment requirements to which such sources may be subject. As a result, this policy allowed some sources to avoid the offset requirement. In either case, EPA will no longer allow such substitutions.

In addition, the requirement for case-by-case offsets (or a growth allowance in an approved SIP) is extended to major new sources and modifications to be located in self-generating rural ozone nonattainment areas. In its past policies (e.g., 44 FR 20372, April 4, 1979), EPA allowed such construction in all rural ozone nonattainment areas without meeting that requirement. The EPA now believes, however, that rural areas shown to contribute significantly to their own ozone problems should be treated, for purposes of the offset/growth allowance requirement, the same as urban ozone nonattainment areas. The EPA will retain its policy of not applying that requirement in nonself-generating rural ozone nonattainment areas, for the reasons discussed in its previous policy notices.

The EPA believes that additional emission reductions are achievable in

[92] When NO_x control is part of the ozone strategy, NO_x emissions must be accounted for in accordance with the provisions of this subsection.

[93] Areas where sufficient monitoring has not been available to determine whether the area is nonattainment or not.

many areas through more stringent new source review/ prevention of significant deterioration (NSR/PSD) programs. The EPA encourages States to consider measures which could obtain further control of new sources or modifications to existing sources as a way to deal with the problem of long-term growth in sources and their emissions. A list of possible new source review measures is contained in Appendix C. The EPA is not requiring States to implement any or all of these measures, but the Agency would consider these measures if it were promulgating a plan or reviewing a plan which indicated that a State could not identify sufficient emission reductions to attain by the required date or meet progress requirements.

G. *Adoption of Enforceable Regulations*—1. *Legal Authority.* The plan must evidence that sufficient legal authority currently exists at the applicable levels of government for the (1) adoption and enforcement of emission limiting regulations for stationary sources; and (2) adoption, operation, enforcement, and monitoring of TCM's. The SIP is to also include the State Attorney General's opinion regarding sufficient legal authority for controlling stationary sources and implementing transportation-related control measures. (See also section V.C.4.)

2. *Public Participation.* The policy will require some areas to evaluate and adopt some longer term measures that may need an extensive and complex planning and implementation process. Some of the longer term transportation-related control measures listed in Appendix C could fall into this category, such as road pricing or use of alternative fuels if implemented on a broad scale. Measures that affect a broad segment of the public such as auto commuters should result from a process that effectively involves the public and all other affected interests. States must comply with the criteria in sections 172(b)(1), 172(b)(9), and 174 of the Act and related guidance which EPA will use to apply the requirements of sections 108(e), 110(a)(2)(J), and 121 in carrying out their public participation process. (See Expanded Public Participation Guideline reference in Appendix H.)

3. *Form of Emission Limits—VOC.* This post-1987 ozone policy continues EPA's previous position of not requiring enforceable mass emission caps (e.g., caps on pounds of VOC per day) as a condition for plan approval. Generally, emission limits can be expressed as weight or mass per unit of production (e.g., pounds of VOC per gallon of coating). States may want to consider whether it is appropriate also to specify emission limits on a "cap" basis as one way to assure their emission reduction targets are met. If a mass emissions cap is adopted by the State, it must be reflected in the State plan demonstration. If a State chooses to adopt an emissions cap type limit, this must only be done as a supplement to a rate-type emission limit.

Other acceptable forms of an emission limits include: (1) Rules setting a requirement for a percent reduction in emissions where the baseline for the reduction is specified, and (2) equipment or work practice standards that are clearly enforceable.

4. *Recordkeeping.* State rules should require explicitly that sources keep records needed to assess compliance for the timeframe specified in the rule.[94] The basic principle to follow here is that sufficient records must be kept such that the State, EPA, or a citizen can easily and quickly determine without doubt the status of compliance of all operations for any time period in question. The rule must specify all appropriate recordkeeping requirements (e.g., reporting schedules and formats, length of record retention, etc.) For example, if the rule requires daily compliance, then daily records must be required. If units of pounds VOC/gallon solids are required for daily compliance, the source must record the gallons of solids used per day and the pounds of VOC emitted per day. The rules should also require sources to list separately the amount of diluents and where applicable to determining compliance, VOC used in wash-up and clean-up operations. Also, sources which keep records based on the coating manufacturers' data must make sure that such data have been generated through a proper test method, where applicable, and not merely through the formula of the coating.

5. *Test Procedures.* State rules should require the use of the most appropriate and current test methods. To determine the VOC content of coatings, States should require EPA-approved test methods [e.g., Reference Method 24 (1-hour bake) or equivalent American Society for Testing and Materials (ASTM) Methods]. The method used to determine volume percent solids should be EPA-approved (see "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA–450/3–84–019, December 1984). The test procedures in outdated ASTM methods and the Volume II Control Techniques Guidelines are no longer acceptable. Procedures should specify that EPA or States may verify test data submitted by companies with independent tests and that EPA- or State-conducted tests will take precedence.

6. *Compliance Schedules.* All emission limiting regulations, control requirements, or control measures that have future compliance dates or establish other future requirements must be accompanied by a schedule for implementation. Such schedules must show interim milestones of progress and describe the consequences of failure to meet such interim dates. Such milestones must be contained in the adopted regulation submitted to EPA, or must be contained in a federally enforceable permit for each affected source. The schedules for implementation of these measures must not contravene any applicable percent reduction described in section IV.B.

7. *Further Requirements for Enforceable Regulations.* Appendix D includes problems found in current SIP's which interfere with efficient enforcement of those regulations. The States must take steps to remove such problems from revised SIP's. (See Section VI.) Also, EPA issued guidance and a checklist to assist States and Regions in developing enforceable regulations. That guidance, signed by Assistant Administrator for OECM, OAR, and OGC is entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency."

V. Measuring and Assuring Progress and Maintenance

For measuring and assuring implementation of the SIP and progress toward attainment, a program composed of aggressive emissions tracking, rule-effectiveness evaluations, and periodic updates to the demonstrations of attainment will be required. To ensure that the ambient standards will be maintained after they are attained, EPA establishes specific requirements related to redesignating areas to attainment, tracking emissions and air quality, modifying the attainment strategy, and accounting for new source growth. The EPA will require the initial plan revision for each area to contain commitments to

[94] The compliance averaging time associated with each emission limit (e.g., continuous or daily compliance) may include periods longer than 24 hours only in accordance with the memorandum from John O'Connor, Acting Director of the Office of Air Quality Planning and Standards, January 20, 1984, titled "Averaging Times for Compliance with VOC Emission Limits—SIP Revision Policy." Without a stated compliance time, rules will be interpreted to require continuous compliance. The EPA recommends that State rules specify an enforceable compliance time.

provide annual implementation tracking reports, periodic updates to the emission inventory, and periodic updates to the demonstration of attainment. The initial plan revision will also be required to contain a commitment by the State to satisfy the reporting procedures and other requirements specified in this policy to ensure maintenance of the ambient standards. The EPA will review the State tracking and update activities and corrective actions (when needed) to determine if the State is continuing to make reasonable efforts to provide for expeditious attainment and RFP. Major deficiencies or problems in tracking progress or implementation of measures could result in EPA's revoking its contingent approval or its finding that the State is not making reasonable efforts and is, therefore, subject to (additional) sanctions. The EPA is also proposing certain requirements for State emergency episode plans to ensure such plans are consistent with and supportive of this policy. The EPA is also proposing to require the State plan to specify the criteria and procedures to be followed to ensure that federally-assisted projects conform with the SIP.

A. *Measuring and Assuring Progress.* States are to aggressively track and report (1) annually, emission reductions from SIP compliance and, periodically, the total emission inventory; (2) the status of implementation milestones; and (3) air quality levels. In addition, States are to report on the results and corrective actions associated with rule-effectiveness evaluations and, every 6 years, to redo their demonstrations of attainment to ensure that their control strategies are still adequate to provide expeditious attainment and adequate progress in the interim.

1. *Aggressive Tracking.* States will be required to report on certain emission reductions, implementation milestones, and air quality in an annual report due within 9 months after the end of the calendar year being reported on. Every third annual report will also contain a complete, updated emission inventory.[95] The first annual report will be for the first full calendar year after the initial plan submittal due date. The first annual report should cover emission reductions and measure implementation since the base year.

The annual report will delineate the emission reductions which have occurred during that year as a result of compliance with the SIP regulations or measures.[96] These reductions will be compared with projections and expected reductions from the demonstration of attainment to serve as indicators of RFP.[97] The State will also provide the status of regulations which were to have been adopted in that year plus the status of compliance efforts by affected sources. Emission reductions occurring in the reporting year which were initially scheduled for earlier years should also be covered. If implementation or compliance problems cause a shortfall in the expected emission reductions from a source category (including expected reductions from mobile source measures) to occur, the State must develop and implement additional measures needed to achieve at least an equivalent amount of reductions as expeditiously as practicable. Additional measures must be submitted in a SIP revision within 9 months after the annual RFP report due date and must achieve the shortfall in emission reductions within 2 years of the end of the year being reported on. Subsequent annual reports should document the implementation of these additional measures.

If delays in full compliance with the regulation(s) are expected, the State should highlight the compliance problems, estimate the date for full compliance, and within 9 months of the end of the reporting year, discuss with the EPA Regional Office the problem and any recommended steps for resolution. The State and EPA will conduct quarterly reviews to ensure that the delays are not substantial. If delays are expected to last more than 1 year, States are required to develop and implement interim measures to eliminate the reduction shortfall until full compliance with the original SIP measure is achieved or to substitute measures to replace the original measure. Interim or substitute measures must be submitted as SIP revisions within 12 months after the reporting year, and schedules for implementing the measures must ensure that the shortfall in emissions reductions is achieved within 2 years of the end of the year being reported on. Subsequent annual reports must document implementation of the substitute or interim measures.[98]

States are required to update every 3 years the entire emissions inventory for their nonattainment areas. These 3-year updates must coincide with the years of the interim projections used in the demonstration of attainment. The first inventory update will be for the year 1992 and will be included in the annual report submitted in 1993. The emission inventory update will be included in the RFP report for the same year for which the inventory was projected in the attainment demonstration.[99] [100]

The initial plan submittal must contain a commitment to revise the SIP (within 9 months of the due date for the RFP report containing the updated inventory) if the emissions reflected in the inventory updates are higher than the emissions represented on the RFP curve. Corrective actions must ensure that the targeted emission inventory level will be achieved expeditiously, but no later than the end of the base year for the next inventory date. These complete emission inventories should also detail new source review (NSR) activity. New source growth should be summarized along with the offsets produced for such growth.

States must also report annually (in the RFP report) on the status of the implementation milestones and commitments which were to have been satisfied in the reporting year. The status of milestones and commitments scheduled but not met in earlier years should also be reported. If a milestone has not been met, the State must document the problems and the plans for satisfying the commitment. The EPA will assume that delays of more than 1 year will significantly interfere with the scheduled implementation of the

[95] As discussed later, the first inventory update will be for the year 1992 and will be submitted in the annual report due in 1993.

[96] Reductions should be net; that is, they must account for the emission growth (from all sources) which has occurred in the regulated categories being reported on. Reductions must also consider appropriate levels of control measure effectiveness.

[97] Since not all emissions and growth are to be addressed in the annual report, compliance with RFP requirements cannot be determined totally in each annual report. However, compliance with expected emission reductions projected for specific source categories will be used to assess RFP in years where total emission inventories are not developed.

[98] EPA will evaluate the State's performance in responding adequately to identified emission reduction shortfalls or problems in implementing control measures. A failure on the part of the State to respond to such shortfalls or problems may result in EPA's rescinding its finding of "reasonable efforts" and imposing sanctions in the area. Although EPA does not expect to take immediate corrective action (e.g., sanctions) when a State first experiences implementation problems, persistent failure to meet the original emission reduction requirements and implementation milestones (discussed later), despite the State's taking corrective action as outlined in this section, may also result in EPA's rescinding its finding of "reasonable efforts" and imposing sanctions.

[99] Additional information on the schedule and content of the inventory updates is contained in "Revised Guidance for Tracking Reasonable Further Progress (RFP) in Ozone Control Programs." The guidance and the above requirements also apply to CO and NO_x (where NO_x controls are part of the ozone strategy). Inventories should be compiled in accordance with "Emission Inventory Requirements for Post-1987 Ozone SIP's."

measure and, therefore, RFP. As such, EPA will consider rescinding its finding of "reasonable efforts" by the State or its plan approval (whichever is applicable) and imposing available sanctions unless the State demonstrates that full implementation of the measure will not be delayed beyond the original due date contained in the SIP and that RFP will continue to be met. Any milestone can be amended or a measure substituted through a SIP revision if the State demonstrates that RFP will continue to be met. Significant delays in the implementation of a measure may cause substitute or interim measures to be required. Substitute measures must ensure that RFP is maintained.

The annual RFP report will also be required to contain a summary of ambient air quality levels. Air quality levels for ozone and CO should be reported in accordance with the "Revised Guidance for Tracking Reasonable Further Progress (RFP) in Ozone Control Programs." In areas with long-term nonattainment dates, States are required to monitor NMOC at a minimum of one monitoring site each year during the ozone season.[101] Other States are also encouraged to measure NMOC each year to compare with emission inventory data and support subsequent modeling analyses.

2. *Rule Effectiveness Evaluations.* States must commit in their initial SIP's to evaluate selected regulations and programs annually to determine whether they are achieving their intended effect. The EPA will identify each year those regulations and programs which should be the focus of the evaluations.[102] Guidance for this effort is contained in "Guideline for Evaluating Effectiveness of VOC Regulations." The EPA Regional Offices and the States will jointly conduct these evaluations, as discussed in the above guidance.

The results of each year's rule effectiveness evaluations must be summarized in the State annual RFP report for that year. Major problems must be identified, and actions needed to remedy the problems must be listed. The report must contain a schedule of the steps the State will take to correct implementation problems. The EPA expects implementation problems to be corrected within 1 year of the due date for the annual report. Subsequent annual reports should summarize corrective actions taken and their results.

3. *Subsequent Demonstrations of Attainment.* States must reexamine their demonstration of attainment periodically (every 6 years, to coincide with a cycle of two updated emission inventories) [103] based on up-to-date emission levels, modeling techniques, emission factors, and air quality levels (O_3, NO_x, NMOC, CO). States with attainment dates within the subsequent 6 years must also project their emissions for at least 10 years from the SIP due date to show that their strategies will provide for maintenance of the standards.[104] States are encouraged to make more frequent reviews of their demonstrations if they believe that significant (and permanent) changes in emission factors, modeling techniques, air quality or other factors in the demonstration might indicate the need for modifying their control strategies. The EPA will periodically provide States guidance on the demonstrations, including information on revised base year emission inventories, modeling methodologies, and schedules for submittal.

The EPA will require the subsequent demonstrations to be submitted within 18 months after the end of the 6-year period.[105] The updated demonstration of attainment must consider the effects that implemented measures have had, including a comparison between these effects and the projections in the earlier demonstration(s). The demonstrations must provide greater detail on long-term measures (to the extent that additional details are available on implementation of these measures) and incorporate the effects of previous changes in the strategy (e.g., additional or substitute measures to account for previous shortfalls). The EPA will consider the performance of the State with regard to implementation of measures and compliance with RFP in reviewing the updated demonstrations of attainment and determining whether reasonable efforts are still being made.

B. *Maintenance Plan and Continuity of Control Programs.* Specific additional requirements apply to areas after they attain the ambient standards, to assure that the standards are maintained into the future. These requirements focus on non-attainment redesignations, maintenance strategies and measures, and EPA review of maintenance results.

1. *Nonattainment Redesignations.* The currant redesignation policy requires: For ozone, 3 years of air quality data showing no violations; for CO, 2 years of air quality data showing no violations; for both, completion of the SIP planning activity and implementation of the associated rules and measures.[106] The above requirements are to apply to the entire MSA. That is, no ambient violations will have occurred anywhere in the MSA (or CMSA) in the last 3 years for ozone or 2 years for CO, and all sources in the MSA (or CMSA) included in the control strategy for the demonstration of attainment will be in compliance.

The EPA is also considering alternatives for addressing redesignation requests involving ozone transport areas. Under current policy, areas with downwind design sites located outside of the control area must show that attainment has occurred at the design site (as well as in the control area) before the area can be redesignated to attainment. For such transport situations, EPA will continue this policy. For more complex transport situations (e.g., the Northeast areas covered in the ROM analysis), EPA is considering whether (1) to require attainment in the downwind area(s) before any upwind area(s) could be redesignated or (2) to allow an upwind area that has attained in its area, and has reduced emissions sufficiently to account for its share of transport to the downwind area, to be redesignated before attainment is shown in the downwind area. The EPA invites comment on these additional redesignation requirements.

As a part of a redesignation request, States must demonstrate that the emission reductions and the attainment inventory (see following discussion) will be maintained into the future.[107] Although EPA recognizes that long-term growth projections can be highly speculative, States will be required to use the best available information to project growth and related emissions as far as reasonable into the future. The air

[100] The first emission inventory update will be for the base year 1992 and will be reported in the annual report due in 1993. The next inventory update will cover the base year 1995 and will be reported in 1996, and so forth.

[101] NO_x monitoring would also be required at this site.

[103] The first updated inventory will be for 1992, the second for 1995; hence, the first subsequent demonstration will use the 1995 inventory as its base.

[104] The 6 years is measured from the original SIP due date or the date the updated demonstration is due.

[105] The first demonstration update (covering the period through 1995) will be due by mid-1997.

[106] The EPA policy on nonattainment redesignations is further described in the following EPA memoranda: "Section 107 Designation Policy Summary," April 21, 1983, Sheldon Meyers to Regional Office Division Directors; "Section 107 Questions and Answers," December 23, 1983, G.T. Helms to Regional Office Air Branch Chiefs.

[107] The requirement to maintain the attainment inventory level in areas which had areawide CO problems will apply to the entire MSA/CMSA. For areas which had only CO hotspot problems, smaller areas (after EPA approval) may be used in determining the attainment inventory level.

pollution control requirements that will apply to that growth should be considered in determining what the resulting emission level will be. A minimum future projection of 10 years (from the redesignation) will be required and 20 years is preferred. The EPA will provide guidance on projecting emissions and other aspects of developing a maintenance plan.

All attainment strategy requirements in the existing SIP's must remain in effect during the redesignation process and until such time as modified in accordance with established SIP revision procedures. Even though the current new source review (NSR) regulations allow a potential exemption from nonattainment area new source review requirements for sources wishing to locate in an area designated nonattainment that can demonstrate attainment before the source would start operation, EPA proposed removing this exemption on January 28, 1981 (at 46 FR 8124). The EPA is now considering implementing this rule change in this policy and invites comment on this issue.

In some areas, for CO, States may desire to reduce the coverage of the nonattainment area. The EPA will consider such requests if the State provides air quality data and a detailed modeling analysis showing that areawide hotspot violations are no longer occurring (and no more are projected to occur for 10 years) in the area outside of the proposed nonattainment area (including any designated attainment areas in the MSA/CMSA outside of the proposed nonattainment area). The EPA will no longer consider requests for redefining the CO nonattainment area smaller than the urbanized area.

2. *Maintenance Strategy Requirements.* Areas must commit (in their initial SIP revisions) to implement the procedures and policies discussed below to ensure maintenance of the ambient standards. These maintenance strategies involve tracking emissions and air quality, regulating new source growth, projecting emissions growth and the need for additional measures, and procedures for modifying the current attainment strategy.

States shall provide a report every 3 years (after attainment is achieved) summarizing all new source growth and other emission changes from the "attainment inventory." [108] The first report will be due 45 months after the end of the year in which (1) the area is formally redesignated (for section 107-designated nonattainment areas) or (2) the area is found to no longer violate the ambient standard (for areas which never had section 107 nonattainment designations or which were designated attainment or unclassifiable when the area is found to not violate the NAAQS).[109] The first report should address all emission changes in the year of the redesignation plus the following 3 years. Thereafter, the report should cover emission changes and other related items in subsequent 3-year periods and will be due within 9 months after the end of the 3-year period. This report and all subsequent reports should also document the results of the rule effectiveness evaluations which have occurred in the 3-year reporting period. Emission changes and inventory levels in the reports must account for appropriate effectiveness levels. The report should document any steps being taken to improve rule effectiveness.

In the 3-year report, the State should provide a complete up-to-date emission inventory. The base year should be the third year of the 3-year reporting period. The inventory should be presented in the form contained in "Emission Inventory Requirements for Post-1987 Ozone State Implementation Plans." The summary of emissions should delineate the emissions growth from new sources or sources which have expanded. Minor and area source growth should be shown, and the State should indicate whether previous assumptions used in projecting minor and area source growth are still appropriate. The sources and magnitude of emissions offsets should be identified. The NO_x and CO emission summaries should also be provided for ozone areas.

If the updated inventory reported to EPA is higher than the attainment inventory, the State must take appropriate action to lower its emissions.[110] Within 9 months from the due date for that report, the State must (1) demonstrate that within the calendar year after the end of the last reporting period, the emissions inventory fell below the attainment inventory or (2) submit a SIP revision containing appropriate measures to ensure that the inventory will fall below the attainment inventory as expeditiously as practicable.

The 3-year report from the State must also summarize air quality levels and trends. If an area had been nonattainment for ozone, NMOC and NO_x levels and trends must also be reported. The EPA will develop additional guidance for States to follow in summarizing their air quality data under the maintenance strategies. States shall project in every other 3-year report (i.e., every 6 years) their expected emissions over the next 10 years. In this report, the State must show that its current SIP is adequate to maintain the standard after attainment. If the SIP measures will not be able to ensure that emissions stay below the attainment inventory level, the State must submit in that report its plan for additional measures to accommodate the growth. The State must commit to implement those additional measures at a rate such that the emission reductions occur before emissions increase from expected growth.

States may decide their own approach for addressing emissions growth as long as the attainment inventory level is maintained and the State satisfies other regulatory requirements (e.g., prevention of significant deterioration in areas redesignated to attainment).

To account for emissions growth, the State can either adopt and implement additional control measures (beyond the federally implemented measures or other measures needed to show RFP) to accommodate the increases or require case-by-case offsets for major and (possibly) minor sources. The State must show that their measures will produce the necessary emission reductions before the emissions growth occurs (whether from major or minor point, area, or mobile sources). Some of these measures will have been identified in the demonstration accompanying the request for a redesignation to attainment. Others may be developed later and submitted as SIP revisions, so long as they create the emission reductions prior to the emissions growth.

Maintenance of the CO ambient standard is to be ensured through an approach similar to the one discussed above for ozone. CO maintenance plans must (1) ensure that emissions remain below the attainment inventory for an area and, (2) periodically assess the effects of new source growth. Exceptions to the first requirement may be allowed if the State demonstrates that its previous CO problem was

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[108] The emission level that is the basis for redesignation to attainment is the attainment inventory. For ozone, this inventory is based on actual emissions during the 3-year period corresponding to the 3-year period during which no ambient violations were recorded. For CO, 2-year periods are used. The lowest annual emission level during this period will be considered the attainment inventory. The EPA will provide additional guidance later to States on the development of the attainment inventory.

[109] The 45 months is based on a requirement to report within 9 months on the first 3-year period.

[110] For CO hotspot problems, the attainment inventory will be used as an indicator of the potential for additional or recurring CO problems.

entirely a hotspot problem and that the emission increases will not cause or contribute to a new hotspot problem.

For both ozone and CO, States are to project their future emissions for at least 10 years in a submittal every 6 years (every other 3-year report). In this report, the State must show that its current SIP is adequate to maintain the standards for the next 10 years in light of expected growth. If the SIP will not be adequate to ensure that emissions stay below the attainment inventory, the State must submit in that report its plan for additional measures to accommodate the growth. The State must commit to implement those additional measures at a rate so that the emission reductions occur before the expected growth.

Having attained the ambient standards, some States may desire to remove or relax certain regulations or measures. Any modification to the attainment strategy would have to be submitted and approved as a SIP revision before such change could occur.

Finally, to ensure that the measures needed to maintain the standards are effectively and continuously implemented, EPA will approve redesignation requests or maintenance plans contingent upon the States satisfying the above requirements.

The EPA will consider revoking its contingent approval of the SIP and imposing sanctions if the State fails to continue to satisfy the requirements set forth above.

C. *Emergency Episode Plans.* States shall demonstrate that their emergency episode plans (adopted pursuant to 40 CFR Part 51, Subpart H) are consistent with the requirements of this policy and are fully adopted and enforceable. The initial plan submittal must contain this demonstration; however, the State may be allowed to provide the demonstration in the first RFP report if significant changes to the emergency episode plan are needed. If such a delay is needed, the initial plan submittal must contain a commitment and schedule for revising the emergency plan by the due date for the first RFP report. Source areas in one State that contribute to ozone exceedances in another State are to develop emergency episode plans which consider those receptor areas. These plans must include a provision for interstate coordination involving air quality data and quality assurance information.

D. *Conformity of Federal Actions With the SIP.* Section 176(c) of the Act requires all federally approved or financially assisted actions (projects, plans, approvals, assistance, etc.) to conform to the SIP's for the areas in which those actions will take place. Metropolitan Planning Organizations (MPO's) are prohibited from approving any project, program, or plan that does not conform to the SIP for that area. Assurance of conformity is also an affirmative responsibility of the head of each Federal agency.

Due to the existing DOT/EPA Conformity Agreement of June 12, 1980, the conformity approach and criteria contained in this section do not apply to transportation plans, programs, and projects approved by MPO's and approved or funded by DOT. The EPA and DOT will discuss the joint updating and revision of the 1980 Conformity Agreement.

To ensure that projects approved by MPO's do not cause NAAQS violations or interfere with timely attainment of the standards (and hence do conform to the revised SIP), EPA will require that each revised SIP explicitly identify direct and indirect emissions from projected major Federal actions that the State and MPO expect to will occur in coming years. The SIP must also set out the State's definition of what future projects would or would not conform with the SIP. The SIP should document assumptions used in predicting future emissions so that emissions associated with Federal actions can be readily compared to emission projections in the SIP. This should include assumptions on growth that can be readily disaggregated (including population, employment, VMT, and emissions, as appropriate).

State implementation plans should also identify the local review procedures and responsibilities in determining conformity and provide for mitigation of violations resulting from Federal actions and emissions not covered by SIP growth allowances. These procedures should specify that conformity determinations cannot be made until sufficient information exists and analysis has been done to make a positive finding that conformity will be assured.

The SIP's conformity definition should state, at a minimum, that a federally approved or financially assisted actions (projects, plans, approvable assistance, etc.) subject to section 176(c) will conform with the SIP only if:

(1) The associated direct and indirect increase in emissions, when considered with emissions from other expected actions, will not cause or contribute to the violation of any NAAQS;

(2) The growth projections (population, employment, VMT) of the proposed Federal action are consistent with the growth projections used in the SIP, as disaggregated for the relevant areas;

(3) The major stationary source, mobile source, and areawide emissions growth rates used or implicitly used are consistent with emissions growth rates used in the SIP;

(4) The associated direct and indirect increases in emissions projected to result from the project are consistent with the SIP growth allowances and projections, to allow RFP toward attainment of all NAAQS as expeditiously as possible;

(5) The proposed action is consistent with the timely implementation of SIP TCM's in accordance with SIP schedules and does not reduce or interfere with the effectiveness of the TCM's in the SIP;

(6) All relevant SIP requirements for stationary source review and permitting are met, including procedural and substantive provisions (e.g., emission limitations and operation requirements);

(7) Associated direct and indirect increases in emissions (a) will not contribute to any exceedances of any prevention of significiant deterioration increments and (b) will not interfere with Class I area visibility protection; and

(8) The facility or activity complies with all other goals, provisions, policies, and requirements of the SIP.

VI. Maximizing Effectiveness of Existing Programs

The EPA requires States receiving SIP calls or disapprovals to correct the SIP deficiencies and inconsistencies described in Appendix D as expeditiously as practicable but at least by the time the initial SIP is due (2 years from the SIP call). The EPA will work with the various States in identifying specific deficiencies contained in their SIP's and in developing a schedule for submitting the needed revisions. The EPA is in the process of upgrading guidance material, developing new guidance where needed, and formulating State-EPA workgroups and clearing houses to assist the States in improving their overall program effectiveness.

VII. Miscellaneous

Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it establishes policies, as opposed to regulations.

This proposed policy was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB to EPA are available for public inspection in the Docket. Pursuant to 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because this action proposes policy as opposed to binding regulations.

Lee M. Thomas,

Administrator.

Date: November 17, 1987.

Appendix A.—Potential 1988 SIP Call Areas

TABLE A-1.—POTENTIAL 1988 SIP CALL AREAS—OZONE

EPA region and area	Exceeding NAAQS 1984–86 (a)	Will exceed NAAQS 1985–87 (b)	May exceed in 1985–87, depending on 1987 data (c)
Metropolitan Statistical Areas (MSA unless marked CMSA)			
I Boston, MA CMSA	YES	YES	
I Connecticut/Massachusetts,[1] CT–MA	YES	YES	
I New Bedford, MA	YES	YES	
I Portland, ME	YES	YES	
I Portsmouth-Dover, NH–ME	YES	YES	
I Providence, RI CMSA	YES	YES	
I Worcester, MA	YES		YES
II Atlantic City, NJ	YES	YES	
II New York, NY CMSA	YES	YES	
III Allentown-Bethlehem, PA	YES		YES
III Baltimore, MD	YES	YES	
III Charleston, WV			YES
III Erie, PA			YES
III Harrisburg, PA			YES
III Lancaster, PA			YES
III Philadelphia, PA–NJ–DE CMSA	YES	YES	
III Pittsburgh, PA CMSA			YES
III Reading, PA			YES
III Richmond, VA			YES
III Washington, DC–MD–VA	YES	YES	
III York, PA			YES
IV Atlanta,[2] GA	YES	YES	
IV Birmingham, AL	YES	YES	
IV Charlotte, NC–SC	YES	YES	
IV Huntington, WV–KY–OH	YES	YES	
IV Jacksonville, FL	YES		YES
IV Lexington, KY	YES	YES	
IV Louisville, KY (IN suburbs [2])	YES	YES	
IV Memphis, TN–AR–MS	YES	YES	
IV Miami-Hialeah, FL CMSA	YES	YES	
IV Nashville, TN	YES	YES	
IV Tampa, FL	YES		YES
V Chicago,[2] IL CMSA (IN suburbs [2])	YES	YES	
V Cincinnati, OH–KY–IN	YES		YES
V Cleveland, OH	YES		YES
V Dayton-Springfield, OH			YES
V Detroit, MI CMSA			YES
V Grand Rapids, MI			YES
V Indianapolis, IN	YES		YES
V Janesville-Beloit, WI			YES
V Milwaukee, WI	YES	YES	
V Muskegon, MI	YES	YES	
VI Baton Rouge, LA	YES	YES	
VI Beaumont-Port Arthur, TX	YES	YES	
VI Dallas-Ft. Worth,[2] TX CMSA	YES	YES	
VI El Paso, TX	YES	YES	
VI Houston, TX CMSA	YES	YES	
VI Lake Charles, LA	YES		YES
VI Longview-Marshall, TX	YES		YES
VI Tulsa, OK	YES	YES	
VII Kansas City, MO–KS	YES		YES
VII St. Louis, MO–IL CMSA (IL suburbs [2])	YES	YES	
VIII Denver-Boulder, CO CMSA	YES		YES
VIII Salt Lake City, UT	YES	YES	
IX Bakersfield,[2] CA	YES	YES	

TABLE A-1.—POTENTIAL 1988 SIP CALL AREAS—OZONE—Continued

EPA region and area	Exceeding NAAQS 1984-86 (a)	Will exceed NAAQS 1985-87 (b)	May exceed in 1985-87, depending on 1987 data (c)
IX Fresno,[2] CA	YES	YES	
IX Los Angeles,[2] CA CMSA (Ventura [2])	YES	YES	
IX Modesto, CA	YES	YES	
IX Phoenix, AZ	YES	YES	
IX Sacramento,[2] CA	YES	YES	
IX San Diego, CA	YES	YES	
IX San Francisco, CA CMSA	YES	YES	
IX Santa Barbara, CA	YES		YES
IX Stockton, CA	YES	YES	
IX Visalia, CA	YES	YES	
IX Yuba City, CA	YES	YES	
X Portland, OR-WA	YES		YES
Non-MSA's			
I Acadia National Park, ME			YES
I Gardiner, ME	YES		YES
I Hancock County, ME	YES		YES
I Knox County, ME	YES	YES	
I York County, ME	YES	YES	
III Dover, DE			YES
III Northampton County, VA			YES
III Seaford, DE			YES
VI Iberville Parish, LA	YES	YES	
VI Point Coupee Parish, LA	YES		
VI St. James Parish, LA	YES		
Total	62	45	31

[1] Connecticut/Massachussetts includes Bristol, Hartford, Middletown, New Britain, New Haven, and New London, CT, and Springfield, MA MSA's.

[2] One of 14 ozone or CO SIP's proposed for disapproval, July 14, 1987 (52 FR 26404)

Explanation of Column Headings:

(a) Locations having expected exceedances of 0.12 ppm greater than 1.0 per year during 1984-86.

(b) These areas are above 0.12 ppm and have measured more than three exceedances during 1985 and 1986. They will continue to exceed the NAAQS during the 1985-87 period even if no exceedances occur in 1987.

(c) Areas currently exceeding NAAQS and showing "YES" in this column measured 3 or fewer exceedances in last 2 years (1985-86). Other areas are not currently exceeding NAAQS, but did so during 1983-85, and may show renewed nonattainment in 1985-87. SIP calls in 1988 for areas in this column will depend on 1987 data. Other areas may also exceed in 1985-87 (see Discussion).

Table A-2.—POTENTIAL 1988 SIP CALL AREAS—CARBON MONOXIDE

EPA region and area [3]	Exceeding NAAQS 1985-86 (a)	Will exceed NAAQS 1986-87 (b)	May exceed in 1986-87, depending on 1987 data (c)
I Boston, MA	YES	YES	
I Hartford, CT	YES	YES	
I Lowell, MA-NH			YES
I Manchester, NH	YES	YES	
I Nashua, NH	YES	YES	
I Providence, RI	YES		YES
I Springfield, MA	YES	YES	
I Stamford, CT		YES	
I Worcester, MA		YES	
II Bergen-Passaic, NJ	YES	YES	
II Jersey City, NJ	YES	YES	
II Nassau-Suffolk, NY			YES
II New York, NY	YES	YES	
II Newark, NJ	YES	YES	
II Syracuse, NY	YES	YES	
II Trenton, NJ			YES

Table A-2.—Potential 1988 SIP Call Areas—Carbon Monoxide—Continued

EPA region and area [3]	Exceeding NAAQS 1985-86 (a)	Will exceed NAAQS 1986-87 (b)	May exceed in 1986-87, depending on 1987 data (c)
III Baltimore, MD	YES	YES	
III Norfolk-Virginia Beach, VA			YES
III Philadelphia, PA-NJ			YES
III Pittsburgh, PA	YES	YES	
III Washington, DC-MD-VA	YES		YES
IV Atlanta, GA			YES
IV Birmingham, AL			YES
IV Charlotte-Rock Hill, NC-SC	YES		YES
IV Greensboro/Winston-Salem, NC			YES
IV Lexington, KY			YES
IV Louisville, KY			YES
IV Memphis, TN-AR-MS	YES	YES	
IV Miami-Hialeah, FL	YES		YES
IV Nashville, TN	YES	YES	
IV Raleigh-Durham, NC	YES	YES	
V Chicago, IL			YES
V Cleveland[4], OH	YES	YES	
V Davenport-Rock Island, IA-IL			YES
V Detroit, MI	YES	YES	
V Duluth, MN	YES	YES	
V Milwaukee, WI			YES
V Minneapolis/St. Paul, MN-WI	YES	YES	
V Peoria, IL			YES
V Rockford, IL			YES
V Steubenville-Weirton, OH-WV	YES		YES
V St. Cloud, MN	YES		YES
V Toledo, OH			YES
VI Albuquerque, NM	YES	YES	
VI Dallas, TX	YES		YES
VI El Paso, TX	YES	YES	
VI Houston, TX	YES	YES	
VI Oklahoma City, OK	YES	YES	
VII Des Moines, IA			YES
VII Dubuque, IA			YES
VII Kansas City, MO-KS			YES
VII Lincoln, NE	YES	YES	
VII Springfield, MO	YES	YES	
VII Wichita, KS	YES	YES	
VIII Boulder-Longmont, CO	YES		YES
VIII Colorado Springs, CO	YES	YES	
VIII Denver,[4] CO	YES	YES	
VIII Fort Collins, CO	YES	YES	
VIII Greeley, CO	YES	YES	
VIII Missoula, MT	YES		YES
VIII Provo-Orem, UT	YES	YES	
VIII Salt Lake City-Ogden, UT	YES	YES	
IX Anaheim-Santa Ana, CA	YES	YES	
IX Chico, CA	YES	YES	
IX Fresno,[4] CA	YES	YES	
IX Las Vegas, NV	YES	YES	
IX Los Angeles-Long Beach,[4] CA	YES	YES	
IX Modesto, CA	YES	YES	
IX Phoenix, AZ	YES	YES	
IX Reno,[4] NV	YES	YES	
IX Sacramento, CA (includes S. Lake Tahoe area)	YES	YES	
IX San Diego, CA	YES		YES
IX San Francisco, CA	YES	YES	
IX San Jose, CA	YES	YES	
IX Santa Barbara-Santa Maria, CA	YES		YES
IX Tucson, AZ			YES
IX Vallejo-Fairfield-Napa, CA	YES	YES	
X Anchorage, AK	YES	YES	
X Boise City, ID	YES	YES	
X Fairbanks, AK	YES	YES	
X Grants Pass, OR	YES	YES	

Table A-2.—POTENTIAL 1988 SIP CALL AREAS—CARBON MONOXIDE—Continued

	EPA region and area [3]	Exceeding NAAQS 1985-86	Will exceed NAAQS 1986-87	May exceed in 1986-87, depending on 1987 data
		(a)	(b)	(c)
X	Medford, OR	YES	YES	
X	Portland, OR			YES
X	Salem, OR	YES		YES
X	Seattle, WA	YES	YES	
X	Spokane, WA	YES	YES	
X	Tacoma, WA	YES	YES	
X	Yakima, WA	YES		YES
	Total	65	52	36

[3] Generally, the area includes the MSA if one exists. In some cases (e.g., the Sacramento, CA MSA) the air quality status may be based on a site distant from the central urban area.

[4] One of 14 ozone or carbon monoxide SIP's proposed for disapproval July 14, 1987 (52 FR 26404)

Explanation of Column Headings:

(a) Locations with at least two exceedances of 9 ppm during 1985 and/or 1986.

(b) Areas with at least two exceedances of 9 ppm in 1986. They will continue to exceed the NAAQS during the 1985-87 period even if no exceedances occur in 1987.

(c) Areas in this column are:

1. Exceeding the NAAQS, but did not measure more than one exceedance in 1986, or
2. Not exceeding the NAAQS, but did so during 1984-85.

SIP calls in 1988 for these areas will depend on 1987 data. Other areas may also exceed NAAQS in 1986-87 (see Discussion).

Appendix B—Procedures for Determining Self-Generating Versus Nonself-Generating Isolated Rural Area

The EPA defines a rural area either as an adjacent rural area, a self-generating isolated rural area or as a nonself-generating isolated rural area. (All rural areas are non-MSA's.) An adjacent rural area is a county with actual monitored violations of ozone that borders a MSA that has been issued a SIP call for ozone. A self-generating isolated rural area is an area that produces, or significantly contributes to, local ambient ozone levels. These areas cannot rely upon upwind areas to provide for attainment in the isolated rural area. Self-generating isolated rural areas will most likely have to adopt additional control measures to demonstrate attainment. A nonself-generating isolated rural area is one that does not signficantly contribute to local ambient levels of ozone. Attainment of the ozone standard in a nonself-generating isolated rural area will occur when sufficient emissions reductions have been achieved from the upwind sources to cause the ambient concentrations of ozone to decrease to the NAAQS in the isolated rural area.

"Self-Generating Tests"

The EPA believes several, simple tests can be performed by the State to determine if an isolated rural area is a self-generating ozone area. Data used for determination of self-generating ozone areas should be taken from the most recent "ozone season" and should be based upon generally recognized data analysis techniques.

(1) Ozone Gradient—These tests require upwind and downwind ozone monitors for the rural site. If an increase in ambient levels of ozone is observed between the upwind and downwind monitors, local emissions may be responsible for generating the ozone increment. If no increase in ambient levels are shown between the upwind and downwind sites, the area may be classified as a nonself-generating isolated rural area. An area defining itself as a nonself-generating isolated rural area is to identify the upwind source area(s) that is causing, or in combination with other areas contributing to, local nonattainment.

(2) Time of Ozone Peaks—Locally produced ozone typically occurs between 12 noon and 6 pm. Peaks observed outside of these hours may be caused by transported ozone from upwind areas.

At times of day when ozone would be highest (i.e., when the gradient, if one exists, might be most significant), large vertical differences in ozone concentrations would not be anticipated. The number of days which would have to demonstrated as due to transport would depend on the total number of exceedances and on whether or not "transport" days can be attributed to a particular upwind MSA and that MSA's SIP adequately accounts for the day in question. For a 3-year period:

Number of Exceedances	Number Transport	Allowable self-generated exceedance
n (n>4)	n-3	0
Do	n-2	1
Do	n-1	2
Do	n	3

(3) Distance From Upwind Source Area—If the isolated rural area is (a) within 10 hours travel time of an upwind MSA, (b) no gradient is present, and (c) trajectory analysis based on surface wind data indicates that the air parcel corresponding with observed violations is not likely to be in the vicinity of the rural area between early morning and noon, the rural area may be assumed nonself-generating and the upwind MSA may be presumed to be responsible for the isolated rural area's ozone levels.

The EPA Regional Offices will work with the States in determining the proper test or data needs to determine if an isolated rural area is self-generating or nonself-generating.

Appendix C—Information Which May be Useful in Assisting States to Achieve Emissions Reductions

The following sections list a number of transportation related control measures, stationary source measures, and potential new source review measures that EPA believes the States can use in selecting measures to gain additional emission reductions above and beyond the federally implemented and federally prescribed measures. These lists are not intended to be exhaustive. State and local agencies may be able to, and are encouraged to, identify other effective control measures.

Transportation Control Measures

The following measures, especially when put into comprehensive packages and implemented on a wide scale, can contribute to achieving periodic emission reductions needed to demonstrate expeditious attainment by a date certain. Nearly all the measures have been implemented somewhere.

1. Voluntary No Drive Days.
2. Trip Reduction Ordinances.
3. Employer Based Transportation Management (including tax incentives for employer programs).
4. Improved Public Transit.
5. Parking Management Programs.
6. Park and Ride/Fringe Parking.
7. Work Schedule Changes.
8. Road Pricing (Tolls).
9. Traffic Flow Improvements.
10. Ride Share Incentives.
11. Control of Extended Idling of Vehicles.
12. Reduction of Cold Start Emissions.
13. Gasoline Fuel Additives.[111]
14. Conversion of Fleet Vehicles to Cleaner Fuels or Engines.[111]

More controversial measures used more prevalently outside the United States include mandatory no-drive days, gas rationing, or such economic instruments as taxes on gasoline, vehicles (purchase and annual registration), and parking. The tax incentive-type measures will tend to discourage or prohibit automobile use. For example, a higher tax will result in a greater disincentive to drive. For the gasoline tax, especially, the level of the tax could be adjusted to help achieve the desired reduction in vehicle miles traveled.

[111] The EPA is currently soliciting comment on two technical reports related to alternate fuels. One discusses the air quality benefits of alternative fuels and the other includes guidance on estimating motor vehicle emissions reductions from the use of alternative fuels and fuel blends. The EPA currently plans to finalize these two technical reports by January 1988.

Stationary Source Measures

Table C–1 lists a number of source categories where control may give significant emission reductions. The heading, "Tightening existing regs. (LAER)," in Table. C–1 refers to revising all current regulations to the level of the most stringent regulation found in any SIP.

TABLE C–1.—SUMMARY OF STATIONARY SOURCE MEASURES

	Potential reduction, tons [1] (in nonattainment areas)
Source category:	
SOCMI distillation	66,000
Petroleum wastewater	11,000
SOCMI reactor process	12,000
Plastic parts coating	16,000
Metal rolling	7,000
SOCMI batch process	38,000
Web offset lithography	31,000
Electronics manufacture	4,000
Aerospace coating	3,000
Wood furniture coating	25,000
Autobody refinishing	53,000
TSDF	330,000
Bakeries	27,000
Fabric printing	10,000
Clean-up solvents	41,000
Municipal landfills	58,000
Industrial wastewater (including POTW's)	63,000
Marine vessel loading	
Pesticides application	
Paint manufacturing	
Ink manufacturing	
Wineries	
Policy Changes:	
Tightening existing regs. (LAER)	[2] 395,000
Area Sources:	
Architectural coating	68,000
Traffic paint	26,000
Industrial maintenance paint	15,000
Consumer and commercial solvents	77,000
Adhesives	46,000

[1] These are emission reductions expected to be achieved by application of appropriate control measures, not total emission inventories.

[2] This reduction is an estimate based on a preliminary survey of available data.

Area sources are an important source of VOC emissions which have often been overlooked in the past. On this list, traffic paint refers to coatings used to paint highway and parking lot stripes. Consumer solvent refers to solvents found in common household products such as hair sprays, deodorants, polishes, and cleaners. It may be possible to reformulate many of these area source products so that they still perform the same function, but contain lower amounts of VOC.

Non-CTG Control Technology Information Documents

The EPA has prepared a number of documents over the years which deal with control technology for VOC emission sources which have not been covered by a CTG. These non-CTG technology information documents have been published in a variety of ways. Some have been given EPA publication numbers and are widely available; others have been prepared by EPA region offices and have been distributed mainly within EPA. Other reports have been issued in draft form only, but nevertheless have received wide circulation as information sources. As States investigate ways to gain further emission reduction through stationary source control, they may find this information useful. Listed below are many of the technology information documents that have been prepared by EPA:

1. Summary of Technical Information for Selected Volatile Organic Compound Sources Categories, EPA–450/3–81–007, May 1981.

This document contains information on the following industries:

Adhesive Application
Asphalt Air Blowing
Barge and Tanker Cleaning
Barge and Tanker Loading
Beer Making
Fabric Printing
Flares
Lube Oil Manufacturing
Oil and Gas Production Storage Tanks
Petroleum Coking Processes
Solvent Extraction Processes
Surface Coating of Large Aircraft
Surface Coating of Large Ships
Surface Coating of Wood Furniture
Waste Solvent Recovery Industry
Wine Making
Styrene—Butadiene Copolymer Latex

2. Air Pollution Control Engineering and Cost Study of the Paint and Varnish Industry, EPA–450/3–74–031, June 1974.

3. Evaluation of the Problems Associated With Application of Low Solvent Coatings to Wood Furniture, EPA–600/2–87–007, January 1987.

4. Nonmethane Organic Emissions From Bread Producing Operations, EPA–450/4–79–001, prepared by Midwest Research Institute, December 1978.

5. Distillation Operations in Synthetic Organic Chemical Manufacturing, EPA–450/3–83–005a, December 1983.

6. Benzene Emissions From Coke By-Product Recovery Plants—Background

Information for Proposed Standards, EPA–450/3–83–016a, May 1984.

7. Surface Coating of Plastic Parts for Business Machines—Background Information for Proposed Standards, EPA–450/3–83–019a, December 1985.

8. Photochemically Reactive Organic Compound Emissions From Consumer and Commercial Products, EPA 902/4–86–001, prepared by EPA Region II, November 1986.

9. Evaluation of a Paint Spray Booth Utilizing Air Recirculation, EPA–600/2–84–143.

10. Benefits of Microprocessor Control of Curing Ovens for Solvent Based Coatings, EPA–625/2–84–031, September 1984.

The EPA Region IV has prepared, with contractor assistance, a number of reports on specific non-CTG sources in specific cities. These reports describe control technology which is available. The reports listed below were prepared by EPA Region IV.

11. Volatile Organic Compound Control at Specific Sources in Louisville, Kentucky and Nashville, Tennessee, EPA–904/9–81–087, December 1981.

This report discusses control technology for these industries:

Wood Furniture
Aluminum Rolling Mill Lubricant Control
Fiberglass Reinforced Polyester Boat Building (Styrene Emissions)

12. Technical Support in the Development of a Revised Ozone State Implementation Plan for Atlanta, Georgia, prepared for EPA Region IV by Pacific Environmental Services, EPA Contract No. 68–02–3887, August 1985.

This report includes:

Architectural Surface Coating
Automobile Refinishing
Commercial/Consumer Solvent Use
Fuel Combustion
Gasoline Volatility
Aircraft Emissions
Degreasing
Lawn and Garden Equipment

13. Summary Report for Technical Support in Development of a Revised Ozone State Implementation Plan for Memphis, Tennessee, prepared for EPA Region IV by Pacific Environmental Services, EPA Contract No. 68–02–3887, June 1985.

This multi-volume report includes:

Wood Furniture Coating
Barge Loading Facilities
Sheet Fed Paperboard Coating
Chemical Processing Plants
Solvent Extraction
Offset Lithography
Bulk Plants

14. Technical Information Document for Technical Support in Development of a Revised Ozone State Implementation Plan for Birmingham, Alabama, prepared for EPA Region IV by Pacific Environmental Services, EPA Contract No. 68–02–3887. This consists of a series of reports published in October and November 1984 and February 1985. Industries covered include:

Surface Coating of Large Aircraft
Paint Manufacturing
Coke Processes
Lamination of Vinyl Countertops
Mineral Wood Production Industry
Brick Manufacturing Industry
Explosives Manufacturing Industry

A number of control technology documents have been widely circulated as draft documents for review. Some of these documents have never been issued as final documents such as CTG's for various reasons, but they still contain much helpful technical information. Copies of some of these may be still available from EPA, especially from the Emissions Standards and Engineering Division of the Office of Air Quality Planning and Standards. Among these are:

15. Draft, "Control of Volatile Organic Compound Emissions From Full-Web Process-Color Heatset Web Offset Lithographic Printing," August 1981.

16. Draft, "Control Technique Guidelines for the Control of Volatile Organic Emissions From Wood Furniture Coating," April 1979.

17. Draft, "Fabric Printing Industry—Background Information for Proposed Standards", April 21, 1981.

18. Draft, "Economic Impact Analysis of Catalytic Incineration and Carbon Adsorption on the Fabric Printing Industry," November 1981.

19. Draft, "Control of Volatile Organic Emissions From Existing Stationary Sources: Paint Manufacturing Industry," U.S. EPA, OAQPS. In addition, EPA's Air Toxics Control Technology Center has issued the following report:

20. Air Stripping of Contaminated Water Sources, Air Emissions and Control, July 20, 1987, Prepared for Air Toxics Control Technology Center, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Potential New Source Review (NSR) Measures

The primary approach a State could follow to mitigate the effects of growth by reductions through its NSR program would be to subject more sources to new source review.

The following measures are being suggested for States to consider in their control strategies as appropriate techniques to deal with growth. Under current rules, new sources and modifications may be exempted from the Part D major NSR requirements by: (1) Having a potential to emit below certain thresholds [100 tons per year (tpy) for new sources and 40 tpy of VOC for modifications to existing major sources]; (2) not being located in an area designated as nonattainment under section 107 of the Clean Air Act (Act); and (3) qualifying for one of the specific exemptions contained in the NSR regulations (e.g., conversion to municipal wastes for power generation, production increases not limited by a permit, increased operating hours).

Each of these situations has a separate set of possible solutions or revisions.

(1) *Thresholds*—The thresholds contained in the NSR program could be lowered to, say, 25 tpy for major sources and major modifications. A significant portion of the total VOC emissions generally come from small sources, so lowering cutoffs would bring significantly more of the VOC emissions into the major NSR program. Even 25 tpy threshold may not cover a majority of the emissions resulting from new sources. One study has shown that for VOC's, modifications and new sources emitting less than 5 tpy compose 55 percent of total new VOC emissions.

(2) *Location Outside Nonattainment Area*—States may wish to apply the nonattainment area NSR requirements of section 173 of the Clean Air Act (and State programs under that section) to sources located outside but near designated nonattainment areas.

(3) *Specific Exemptions*—The definitions currently contained in the NSR program exempt certain increases in emissions from being considered as a modification. These exemptions allow sources capable of accommodating alternative fuels or raw materials to switch fuels or raw materials (e.g., from oil to coal) without being subject to major NSR requirements. Also, sources may increase their operating hours (e.g., from 8 hours per day to 24 hours per day) and throughput (e.g., from 60 percent of capacity) to the maximum possible while meeting Federal NSR requirements (unless the changes are specifically limited by Federal enforceable conditions). States could remove these exemptions from the NSR regulations.

Appendix D—Discrepancies and Inconsistencies Found in Current SIP's

The EPA has reviewed a number of SIP's and found inconsistencies and discrepancies from established EPA policy and guidance. The following

discussion lists the most prominent problems and suggests corrections to these problems. While no State or local agencies are specifically identified, EPA intends to discuss individual State and local deficiencies with the appropriate agencies at the time the SIP call is made.

a. Achieve Consistent Implementation of New Source Review Programs

During its audits of State and local NSR programs, EPA has found considerable differences in how agencies implement their NSR regulations. EPA has found, for example, that many major modifications of sources escape preconstruction review and that lowest achievable emission reduction (LAER) determinations for sources subject to NSR are often inconsistent and insufficiently stringent. In many cases, these problems may result from improper interpretation of the applicable rules. To minimize the likelihood that this will occur in the future, EPA intends to develop guidance on such issues as how emissions increases and decreases should be calculated for netting purposes, when and how implementing agencies may use growth allowances as a substitute for offsets, and how to ensure that best available control technology and LAER determinations reflect the best technology for the source in question rather than simply the new source performance standards control level. The EPA also intends to increase its auditing and enforcement of State programs.

New Source Review Regulations

The primary focus of the new source review regulations is to evaluate the emissions impact of new or modified source projects before construction commences on the projects. The basic requirement for a new source of air pollution is to ensure that its emissions do not cause any new nonattainment situations or exacerbate any existing nonattainment problems. All sources must "prove," generally by modeling air quality impacts before and after the proposed change, that they do not cause or contribute to any nonattainment problem. For major new sources and major modifications wishing to locate in designated nonattainment areas, the applicant must also show that the most stringent pollution control equipment (LAER) is being installed, that all other sources owned by the applicant within the State are in compliance (Statewide compliance), and that the emission increases are either offset or taken into account with an approved growth allowance (emission offsets). These requirements are listed in the Clean Air Act in sections 172 and 173.

The wording in some State NSR regulations allows or has the potential to allow certain sources to avoid some or all of the intended requirements of new source review. This is in conflict with the Federal provisions, since State rules can be more stringent than the Federal provisions, but in no case can they be less stringent. The EPA believes that appropriate guidance and technical support can help ensure that States implement the new source review regulations in conformance with EPA policy; however, States may need to correct or clarify some of their regulations to avoid possible applicability or enforcement problems that may arise under new source review due to less stringent provisions. The following areas are the focus of efforts to achieve conformity with EPA policy.

Exemptions

Permit Conditions: Federal requirements state that only federally enforceable permit conditions may be used to exempt a source from the requirements for major sources. State operating permits and State consent decrees are not federally enforceable unless incorporated into the SIP either through EPA approved case-by-case rulemaking or through a generic mechanism. State preconstruction permits issued by States under EPA-approved SIP regulations pursuant to 40 CFR 51.18, 51.24, or 51.30, as well as construction permits issued by EPA or by delegated States under 52.21 are federally enforceable.

State Nonattainment Designations: The EPA will not permit a State to exempt sources located in nonattainment areas that the State has designated "attainment" without EPA approval. Similarly, States will not be permitted to use attainment demonstrations that have not received EPA approval to determine whether an offset or netting transaction is consistent with RFP.

General: States should revise their regulations to remove any regulatory provisions that could be used to exempt any source from any major NSR requirements. The only exclusions are those contained in the Federal definitions of major stationary sources [40 CFR 51.165(a)(1)(iv)] or major modifications [40 CFR 51.165(a)(1)(v)]. No source type (e.g., cotton gins, resource recovery facility) or source class (e.g. reactivated sources) may have a blanket exemption from any new source review requirement. This is a problem under the major source and major modification thresholds, since the NSR provisions require that all emission increases be accumulated for applicability purposes. For example, a single cotton gin may be a minor source, while four cotton gins (under common ownership) locating on one piece of land would constitute a major source or major modification. States may retain exemptions from *minor* source permitting requirements if (1) there exists a federally approved growth allowance to mitigate resulting increases in emissions and (2) State regulations expressly prohibit the use of the exemptions to exempt any major source or major modification from major NSR requirements.

Clean Spot Exemption: As a result of the August 1980 rulemaking which was conducted as part of the *Alabama Power* decision, State regulations cannot contain provisions that exempt a source from major new source review requirements where the source does not "significantly cause or contribute to a violation of a National Ambient Air Quality Standard." The August 1980 requirements subject any major source or major modification located in an EPA designated nonattainment area to the major NSR requirements regardless of the ambient impact of the source. Some SIP's, however, still retain this exemption and should be revised.

Offset/Netting Requirements [112]

Offsets: The EPA requires State regulations to contain enforceable and specific criteria on the credibility of emission reductions as offsets. These provisions must include a specific, well-defined baseline for emission increases and decreases, a requirement that all emission reductions used for offsets be federally enforceable (see section on permit conditions above), certain restrictions on the use of emission reductions caused by prior shutdowns and curtailments as offsets, and the prohibition of the use of any emission reductions already included in a State attainment demonstration. The last requirement listed is to ensure that a State does not use a reduction twice, i.e.,

[112] Pending, or future litigation, or subsequent rulemaking, particularly final resolution of the settlement agreement arising from the industry challenge to EPA's 1980 promulgation of revised NSR rules (*Chemical Manufacturers Association vs. EPA*, No. 79-1112, D.C. Cir., February 1982), may alter these requirements. See 48 FR 28742 (August 25, 1983) (proposed revisions). However, unless and until EPA finally revises the relevant regulations, the current requirements remain in effect. If a State changes its regulations to meet these requirements and EPA then relaxes these requirements pursuant to this CMA settlement agreement, EPA will allow the States to change their applicable regulations as appropriate.

once for attainment purposes and once for mitigation of new source growth.

Netting: The EPA requires State regulations to contain specific and enforceable criteria if a State wishes to allow a source to "net out" of major NSR review. A source "nets out" of major new source review by securing emission decreases within the source to mitigate increases from the same source, resulting in an "insignificant" emissions increase on a sourcewide basis. The Federal regulations require the following criteria for netting: (1) An "actual" baseline; (2) health and welfare equivalence between the emission increases and decreases; (3) Federal enforceability of emissions decreases (see section on permit conditions above); (4) a specific contemporaneous time frame (up to 10 years); and (5) the prohibition on the use of any reductions already incorporated in a State's attainment demonstration (see discussion on offsetting above). The health and welfare equivalence generally focuses on the concept of air quality; the air quality effects of the proposed netting action must result in equivalent or improved air quality. For "stable" pollutants, this places an emphasis on dispersion. For an ozone nonattainment area, the relative reactivities of the VOC species also plays an important role in air quality determinations. The State should not allow a netting transaction that causes an increase in a reactive VOC and a decrease in a negligibly reactive VOC even if the absolute amount of VOC emitted does not increase significantly. The contemporaneous timeframe is needed to ensure that increases are accumulated over a reasonable period of time, to discourage construction projects exempting themselves from NSR, and ensure that decreases are not so old as to already be taken into account in attainment demonstrations. Also, if a reduction occurred a very long time ago, that reduction should go towards assisting an area to show attainment rather than assisting a source to avoid major NSR requirements.

Definitions

VOC: NSR regulations should use a VOC definition that defines VOC as all organic compounds except those that EPA has listed in its Federal Register notices as nonphotochemically reactive. (See VOC definition in RACT regulations discussion.)

Other: NSR regulations should contain clear definitions, consistent with Federal requirements, for the following terms: Stationary source; actual emissions; allowable emissions; fugitive emissions; commence or begin construction; building, structure, or facility; and major stationary source. State regulations that do not contain good, concise definitions that meet the Federal requirements risk treating sources inequitably because of varying interpretations of the definitions. For example, minor variations in a State rule regarding the LAER definition which appear unimportant could allow a source to avoid installing proven technology by arguing that it costs too much, a result that is unacceptable using the EPA definition. The definitions must provide a framework to make decisions replicable among sources.

Small Sources

Lack of Minor Source and Minor Modification Review: As required by the Federal rules, SIP's should require a review program of all sources of air pollution regardless of size. This review must include an assurance that no new source or modification will interfere with attainment and maintenance of the standard as well as a requirement that all construction projects be subject to public comment procedure. Many States only have requirements for major sources and major modifications. States may only exempt minor sources from these requirements if (1) there exists a federally approved growth allowance to mitigate resulting increases in emissions and (2) State regulations expressly prohibit the use of exemptions to exempt any major source or major modifications from NSR requirements.

b. Ensure Conformity of SIP's With Existing EPA Policy

Although most SIP regulations have met the terms of EPA's requirements for Part D plans, EPA may have approved some SIP's containing rules that do not meet those requirements.

Some State regulations controlling VOC emissions are being implemented in a manner that is not consistent with EPA requirements and policies and can, in certain cases, significantly interfere with the effectiveness of those regulations. These implementation problems appear to be caused by incorrect or ambiguous definitions, variable interpretation, the lack of key provisions (e.g., compliance times, test methods, etc.), or specific provisions in State regulations that are inconsistent with current EPA policies. In some cases, these problems can interfere with the States' ability to (1) secure their expected emissions reductions from stationary source RACT regulations or (2) control emission growth through their NSR regulations. EPA plans to work with States to identify these problem areas and provide training, guidance, and other technical support to ensure that RACT and NSR regulations are effectively implemented.

Stationary Source RACT Regulations

The existing RACT regulations were developed as a major component of the SIP strategies to achieve VOC emission reductions. The following describes the areas where RACT regulations have been adopted and/or implemented on an inconsistent basis.

RACT Regulation Exemptions

Many of the CTG's that EPA issued in the late 1970's recommended that States exempt from their RACT rules only those sources falling below certain size or throughput cutoffs. Other CTG's recommended no such cutoffs. Some of the RACT regulations now in the SIP's, however, establish exemptions wider than those recommended in the CTG's or provide exemptions so ambiguous as to be susceptible to abuse. The EPA will require the States to amend such rules to ensure that these exemptions conform to the CTG recommendations in all cases except those for which the State provides adequate justification that the CTG level would impose unreasonable requirements in that State.

Definition of 100 Tons Per Year Source

The EPA guidance has called on SIP's for extension areas to require RACT for sources with the potential to emit more than 100 tons per year (tpy), but that do not fall into a CTG category. Although EPA intended the definition of source for this purpose to be the entire plant, some SIP's are susceptible to an interpretation requiring RACT only for individual emissions units emitting more than 100 tpy. Also, some SIP's are susceptible to a reading under which the source must apply RACT only if it has a potential to emit more than 100 tpy with controls. EPA intended, however, to have States apply RACT to non-CTG sources emitting more than that amount without controls. Therefore, EPA intends to require the relevant States to amend VOC rules that do not clearly reflect EPA's intent.

Other Issues

Existing VOC rules contain a variety of other ambiguities and exemptions that may impede efforts to achieve full RACT-level reductions. Although some of the affected State or local agencies currently interpret these rules consistently with EPA policy, courts will frequently turn to the actual words of the rules to decide the legal obligations of the affected sources. For that reason, EPA believes it is essential for States to

amend these rules to state clearly what is required. Until the States change these rules, the Agency will continue to interpret them consistent with EPA's intent when it approved them and will encourage the relevant State or local agencies to do the same. Examples of these deficiencies are described generally below.

Emission Limit Units: VOC rules incorporating limits expressed as pounds of VOC per gallon (lb VOC/gal) of coating should also list the equivalent lb VOC/gal of solids emission limit. It will be acceptable but not mandatory to totally replace pounds of VOC per gallon of coating units with units of lbs VOC per gallon of solids. VOC rules should state that units of lbs VOC/gal of solids be used for all calculations involving emission trades, cross-line averaging, and determining compliance by add-on control equipment such as incinerators and carbon adsorbers.

Exempt Solvents: Compliance calculations for coatings expressed as lb VOC/gallon coating (less water) should treat exempt solvents such as 1,1,1-trichloroethane and methylene chloride as water for purposes of calculating the "less water" part of the coating composition.

VOC Definitions: These rules should define VOC as all organic compounds except those that EPA has listed as photochemically nonreactive in its Federal Register notices. Many rules incorrectly contain a vapor pressure cutoff (e.g., 0.1 mmHg) that effectively exempts some photochemically reactive compounds (such as butyl dioxitol, a paint solvent, and certain mineral oils) from control. The following definition is a model for use:

Volatile Organic Compound (VOC)—Any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the Administrator designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method or by procedures specified under 40 CFR Part 60. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard.

Other Definitions: A variety of other definitions in VOC rules are inconsistent with EPA's CTG's. EPA proposes to identify these deficiencies and require the States to remedy them.[113]

Transfer Efficiency: Transfer efficiency is a measure of how efficiently coating solids are applied to the objects being coated in spray coating operations. Increasing transfer efficiency reduces the amount of coating used for a particular job and may thereby reduce VOC emissions. Some States have attempted to provide sources with credit for transfer efficiency improvements.

The EPA proposes to require that sources be allowed to seek credit for transfer efficiency improvements only if the SIP specifies a baseline transfer efficiency and a test method acceptable to EPA for determining actual transfer efficiency. (The use of default, assumed or table transfer efficiency values would be unacceptable.) This could be done either with general or source-specific SIP revisions.

Cross Line Averaging: A source may use crossline averaging only upon (1) EPA approval as a source-specific SIP revision or (2) State adoption under a cross-line averaging or equivalency rule that EPA has approved generically.

Compliance Periods: VOC rules should describe explictly the compliance timeframe associated with each emission limit (e.g., instantaneous or daily). However, where the rules are silent on compliance time, EPA will interpret it as instantaneous. The rules could include periods longer than 24 hours only in accordance with the memorandum from John O'Connor, Acting Director of the Office of Air Quality Planning and Standards, dated January 20, 1984, entitled "Averaging Times for Compliance With VOC Emission Limits-SIP Revision Policy," and only as source-specific SIP revisions.

Recordkeeping: The EPA would require States to amend their VOC rules to require explicitly that sources keep records needed to assess compliance for the timeframe specified in the rule. Records must be commensurate with regulatory requirements and must be available for examination on request. The SIP must give reporting schedules and reporting formats. For example, these rules must require daily records if the SIP requires daily compliance. If a company is bubbling its emissions on a daily basis, the rules must require daily records to determine compliance. If units of lb VOC/gallon solids is used in calculations for daily compliance, the source must record gallons of solids used per day and pounds of VOC emitted per day. The rules should also require sources to list separately the amount of diluents and, where relevant to determining compliance, wash and clean-up VOC. Beyond that, they should require sources to document (1) that the coatings manufacturer used either EPA Method 24 or an EPA-approved State method to calculate the amount of VOC per gallon of coating (less water and exempt solvents) and (2) what method the manufacturer used to calculate the volume percent solids content of the coatings.

Test Methods: EPA will require States to amend their VOC rules to require the use of the most current test methods to determine the VOC content of coatings [e.g., EPA Reference Method 24 (1-hour bake) or equivalent ASTM Methods]. The method used to determine volume percent solids should be specific and should be an EPA-approved method (see "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019, December 1984). The procedures in outdated ASTM methods and the Volume II CTG are generally no longer acceptable. Procedures should specify that EPA or States may verify test data submitted by companies with independent tests and that EPA or State conducted tests will take precedence.

The EPA will also require States to amend their VOC rules to state the procedures to be used to measure capture and control device efficiencies. For example, the rules for some types of sources or control systems should require the use of temporary enclosures, rather than material balances, in capture efficiency tests. Provisions that require "well engineered capture systems" or "maximum reasonable capture" should be replaced with specific control requirements.

Equipment Leak Components: The EPA shall require equipment leak SIP regulations to be strengthened according to the intent of the CTG's. For example, sources that have previously been exempt from monitoring requirements due to line size or the use of plug and ball valves should become subject to the SIP requirements. In addition, SIP's should not exempt unsafe and inaccessible valves from all periodic

[113] For example, definitions of "coating line" should not exempt from control coating lines that do not have bake ovens. Also, definitions of "refinishing" in miscellaneous metal coating rules should make clear that "in-line" or "final off-line" repair by original equipment manufacturers is not refinishing. Refinishing should be defined as the repainting of used equipment. The definition of paper coating should be refined to make clear that the paper coating regulations cover coating on plastic film and metallic foil as well as paper. Paper and fabric coating should cover saturation operations as well as strictly coating operations. Vinyl coating definitions should make clear that organisol and plastisol coatings (which traditionally have contained little or no solvent) cannot be used to bubble emissions from vinyl printing and topcoating. Coating should be defined to include "functional" as well as protective or decorative films.

monitoring requirements. The EPA believes that inaccessible and unsafe-to-monitor valves should be monitored as often as practicable because of the potential for finding leaks and reducing emissions. The EPA does not consider annual monitoring or monitoring at shutdown to be an unreasonable burden for inaccessible and unsafe-to-monitor valves.

For natural gas plants, RACT should apply to equipment that contains or contacts a process stream with a VOC concentration of 1.0 percent by weight or more. Equipment with process streams containing relatively low percentages of VOC (i.e., between 1.0 and 10.0 percent) contributes a significant portion of total emissions from natural gas plants and, therefore, is subject to RACT requirements.

Exemptions and Variances: Many SIP's contain provisions giving the State authority to grant variances, exemptions, and alternative means of control strategies. SIP's must clearly state whether EPA approval of such variances is required on a case-by-case basis before such a variance, exemption, or alternative means becomes federally-effective. Provisions that are intended to be generic (i.e., not requiring case-by-case EPA approval for the alternative means to be federally-effective) must meet the general principle of replicability described in EPA's Emissions Trading Policy Statement (51 FR 43814, December 4, 1986).

Appendix E—Guidance Document on Enhanced I/M

I. Introduction

The EPA has considered the potential for greater VOC and CO reductions from vehicle inspection and maintenance programs, and believes that substantial enhancement is available.

The EPA is considering a variety of options relative to enhanced I/M, including establishing a specific enhanced I/M performance level for some nonattainment areas as well as relying on the 3 percent reduction requirement to force consideration of enhanced I/M in lieu of a mandated performance requirement. The latter option would allow States to consider the benefits of enhanced I/M, along with those of other control measures, in deciding how to meet the 3 percent average annual reduction requirement.

The other option toward which EPA is presently learning would be to establish a specific enhanced I/M requirement for areas with relatively serious ozone or CO nonattainment problems. The remainder of this appendix describes aspects of and issues related to a separate enhanced I/M requirement, if adopted.

Possible enhancements fall into four categories. First, operating losses due to improper inspections, incomplete enforcement, or lenient repair waiver systems can be reduced. Second, additional vehicles which are exempt based on age, or vehicle type can be made subject to the inspection requirement. Third, the emission test portion of the periodic inspection can be made more sophisticated or the pass/fail limits or cutpoints more stringent. Fourth, important emission control components can be checked visually, or by other means that do not involve emissions measurement, for evidence of tampering or misfueling.

The concept of "enhanced I/M," therefore, covers both increases to the coverage and stringency of inspection, and improved management practices to assure full effectiveness. The requirements being considered for areas adopting enhanced I/M are explained in detail below.

II. Background

In 1978, EPA first established policy for the implementation of the I/M programs required under the Clean Air Act Amendments of 1977. This policy addressed the elements to be included in SIP revisions, minimum emission reduction requirements, administrative requirements, and schedules for implementation. Approvable I/M programs were to be in place in all ozone and CO extension areas by the end of 1982, and were to produce at least a 25 percent reduction in light-duty vehicle hydrocarbon exhaust emissions and at least 3 percent reduction in CO exhaust emissions as of the end of 1987.

At this time, there are I/M programs operating in 60 urban areas in 32 States. There are a variety of program designs in place, some which just exceed minimum levels, and some which contain additional measures to achieve greater emission reductions. The EPA audits of I/M programs over the last 3 years have identified both considerable accomplishments by State and local agencies in implementing programs successfully, and a number of operating problems. These audit findings serve as the basis for the increased stringency and the additional administrative requirements associated with enhanced I/M.

III. New Performance Standard for VOC and CO Reductions

The EPA has developed a computer model which it proposes to use to assess the benefits of various I/M program designs, expressed as annual tons of reduction from a typical urban fleet of one million vehicles. The model is based on MOBILE3, but performs additional manipulations of the emission estimates. The assumptions employed in this computer model are explained in detail in the technical report, entitled "Method for Estimating the Cost-Effectiveness of Inspection/Maintenance Program Designs."

The EPA is leaning toward a nominal performance standard to be achieved by enhanced I/M of 5700 tons of HC and 69,000 tons of CO per year per million light-duty vehicles over the first 5 years of operation of the enhanced program. This level represents the design level of the third most stringent of the 27 or so distinct I/M programs currently in operation. As discussed in the preamble of this policy, EPA is also considering other performance levels which could be established, if a separate enhanced I/M requirement is adopted. The level of performance described above would be equivalent to the following design:

—Centralized biennial inspections
—20 model years of passenger cars and light trucks
—20 percent stringency for pre-1981 vehicles
—Idle test
—207(b) cutpoints for 1981+ vehicles (1.2 percent CO/220 ppm HC)
—Catalyst, inlet, and lead deposit inspections on 1981+ vehicles
—5 percent waiver on the emission short test

Programs which vary from this design yet have equivalent emission reductions would be acceptable. For example, decentralized biennial inspections and/or fewer model years of coverage are also allowed, provided other features of the program design are strengthened such that the estimated benefit meets the new performance standard.

Programs may show equivalency to this design using either national or local conditions of tampering/misfueling rates, vehicle type mix, average speed, etc. Use of local conditions may result in a performance standard different than 5700/69,000; in all cases, equivalency to the above design would be the controlling criterion for approval.

The new computer model has two features which were not included in MOBILE3 but which grew out of the past 3 years of evaluating operating programs. First, for purposes of SIP approval, decentralized programs will be credited with identifying and repairing existing tampering at a rate which is less than that modeled for centralized programs. The initial analysis suggests a reduced

effectiveness of decentralized programs of about 50 percent. Comment is specifically requested regarding the appropriate effectiveness level of decentralized tampering programs and what design features might be necessary to ensure that level of effectiveness. Comment is also requested regarding the related issue of whether the proposed enhanced I/M performance requirement is appropriate for both centralized and decentralized programs.

Second, all programs which allow waivers must assume for purposes of SIP approval a target waiver rate which will be translated into a corresponding percentage loss of the repair benefit on the emission short test. In previous SIP approval actions on I/M program designs, EPA assumed no loss of benefits due to waivers. The administration of the waiver program is discussed later in this document.

Programs which are not enforced through a registration denial system must also make adjustments of the projected benefit based on recent operating experiences. Those with known enforcement shortfalls must assume continuation of the shortfall for SIP submittal purposes. Programs may conduct new surveys to document improvements believed to have occurred since the last EPA survey, but such surveys may not be influenced by any one-time special enforcement effort.

IV. Where Enhanced I/M Would Be Required

The EPA will call for new SIP's in areas which continue to exceed the NAAQS for ozone and carbon monoxide after December 31, 1987. Each area receiving a SIP call will have two years to submit a plan which contains detailed information on emission inventories, new control measures, and a demonstration of attainment of the NAAQS by a specific date.

If a separate enhanced I/M requirement is adopted, the EPA intends to require enhanced I/M for severe and/or long-term nonattainment areas. Urban SIP-call areas with greater than 200,000 population and with ozone design values of 0.16 ppm or above and/or carbon monoxide design values of 17 ppm or above will be subject to this requirement.

A nonattainment area with population greater than 200,000 with design values below 0.16 ppm ozone and 17 ppm CO would also be required to implement enhanced I/M, unless the EPA approved modeled attainment demonstration for the area shows that it is not a long-term nonattainment area, i.e., that attainment will be achieved within 3 years after EPA's approval of the SIP.

An area needing less emission reduction to demonstrate near-term attainment may include none, part, or all of the enhanced I/M measure as one of its locally selected controls.

V. Geographic Coverage

For extension areas and post-1982 SIP call areas, EPA previously required that the minimum performance level be met for vehicles registered within the affected urbanized area as defined by the U.S. Census. Under an enhanced I/M requirement, if adopted, the coverage area would remain the urbanized area. Emission reductions obtained from vehicles outside the area but within the Metropolitan Statistical Area/Consolidated Metropolitan Statistical Area would not count toward meeting the enhanced I/M performance level, but would assist the area to meet its emission reduction target overall.

VI. Implementation Schedule

There is a considerable amount of variation in the types of steps individual areas will need to take to enhance their I/M programs. In some cases, new legal authority will be necessary, followed by rule changes. In other cases, rules would be modified under existing basic authority. The longest leadtime would occur where a complete system change (i.e., from decentralized to centralized inspections) was contemplated.

Each severe and/or long-term nonattainment area receiving a SIP call should move as expeditiously as possible to satisfy the enhanced I/M requirement, if adopted. The EPA expects that even the long leadtime program enhancements would be implemented by January 1, 1990, unless adequately documented circumstances prevent it. The initial SIP submittal in response to the SIP call must contain all enforceable rules and regulations for enhanced I/M.

VII. New Administrative Features

If EPA decides to adopt a separate enhanced I/M requirement, in addition to the emission reduction requirement being considered, and the minimum program requirements established in previous EPA policy, all enhanced I/M programs will also be required to:

1. Incorporate appropriate criteria for the issuance of cost waivers;

2. Employ measures to assure proper inspection in decentralized programs including a requirement for computerized analyzers in licensed stations unless alternative approaches have been proven and accepted by EPA as effective;

3. Conduct activities to improve the repair effectiveness of the commercial sector; and

4. Perform certain program assessments and evaluations.

A. Waivers

As mentioned previously, the model program design used to determine the enhanced I/M performance standard being considered assumes that five percent of the failed vehicles will receive repair cost waivers, and will achieve no emission reduction benefit on average. This waiver rate is actually lower than that experienced in many currently operating I/M programs, and represents stricter control and tighter requirements for waiver issuance.

Areas implementing enhanced I/M and wishing to maintain a repair waiver should include at least the following criteria for receiving a waiver in their program rules:

1. The vehicle must be greater than 5 years old or exceed 50,000 miles. (Owners of failed vehicles should be informed that warranty coverage may be available, and the SIP should contain a plan for assisting owners with warranty difficulties.)

2. The vehicle must pass a catalyst and inlet check, and a check for tailpipe lead deposits.

3. The motorist must spend at least $75 for pre-1981 vehicles and $200 for 1981+ vehicles on emission diagnosis and repair related to the I/M failure. 1981+ vehicles waived one year under these cost rules may be waived in the subsequent annual or biennial inspection cycle with only a $75 expenditure.

For the purpose of SIP approval, enhanced I/M areas will commit to holding waivers to a target rate. Program effectiveness will be measured using actual waiver rates.

B. Repair Effectiveness

The enhanced I/M SIP revision must include a plan for identifying individual providers of I/M repair services, statistically monitoring their performance in terms of waivers and post-repair emission levels, and counseling/training the poor performers among them. This will require, at a minimum, that drivers of retested vehicles identify the facility which performed the repairs, and that the I/M program enter this into a database along with retest scores. Licensing of repair facilities, however, is not necessary to satisfy this requirement.

C. Proper Inspection in Decentralized Programs

Unless alternative approaches have been proven and accepted by EPA as effective, licensed inspection stations in decentralized programs must be required to use computerized emission analyzers which restrict operation unless specific quality control checks are satisfied; which accept vehicle identification and other information; and which automatically make the pass/fail decision, provide hard copy output, and store pertinent data for future analysis.

Automated quality control checks are required both to assure adequate instrument accuracy (e.g., unit warm-up, periodic gas span and leak checks) and to assure that the emission test is not deliberately defeated. An engine speed (RPM) lockout criterion must be included which has a ceiling during idle of not more than 1600 RPM. The analyzers must be capable of reading RPM on any of the current or planned distributorless ignition systems which have significant market penetration. A bypass of the RPM lockout is permitted to accommodate individual vehicle testing problems and future, unanticipated technologies with small market penetration. The use of the bypass, however, must raise a flag in the recorded data.

The analyzer must also measure carbon dioxide ($CO_2$2) in order to invalidate a test where excessive dilution of the sample is occurring. The CO plus CO_2 threshold must be no lower than 4 percent.

There must be a positive, retrospective verification that a passing initial test, passing retest after repair, or official waiver is recorded for each windshield sticker or certificate of compliance that is issued. At a minimum, station by station totals of inspection records and stickers/certificates must be compared on a monthly basis, with established procedures for handling stations with discrepancies.

Statistics on failure rates and waiver rates must also be available by station, and an internal management report must be generated, reviewed, and acted upon monthly which identifies stations with unusual statistics.

The SIP must commit to sufficient program administration and enforcement to achieve the claimed emission reductions. Such efforts should include routine analysis of inspection data for RPM excursions, dilution failures, time between tests, et cetera, to identify and investigate stations with suspicious inspection practices, and a program to conduct undisclosed audits of inspection stations on at least an annual basis.

The SIP must also contain a formal plan for processing and penalizing violations of procedures, whether discovered through periodic audits or covert audits.

D. Program Assessment

Each I/M program must prepare and submit a report to EPA on a semi-annual basis. The report would contain the results of data analysis conducted by program officials, a description of significant changes in the program that were implemented in the last 6 months, a description of significant problems experienced and a description of any changes to the program that are being planned. The following list describes the minimum data necessary for the semi-annual report. Each of these items should be provided for the past 6 months and for the past 12 months.

(1) Estimated number of vehicles required to be inspected.

(2) Number of vehicles recorded as receiving initial inspection by model year.

(3) Number of vehicles failing the initial emission test by model year.

(4) Number of vehicles failing each retest by model year.

(5) Number of vehicles failing for each tampering component for which SIP credit is claimed by model year.

(6) Number of vehicles receiving waivers by model year.

For programs that have both centralized and decentralized components, the data must be reported separately for each component.

In addition to the minimum data reporting requirements described above, additional information is needed from decentralized programs. The semi-annual report must contain information relating to station performance. At minimum, the following items must be generated and available to EPA on request:

(1) Number of vehicles inspected by station and by model year,

(2) Number and percentage of vehicles failing the initial emission test by station and model year,

(3) Number and percentage of vehicles failing the retest by station and by model year,

(4) Number and percentage of vehicles failing for each tampering component for which SIP credit is claimed, by station,

(5) Number and percentage of failed vehicles receiving waivers by station and by model year,

(6) Number of overt station audits conducted,

(7) Number and types of covert surveillance activities conducted,

(8) Number of facility licenses outstanding at the end of reporting period,

(9) ID numbers of stations warned, suspended, or revoked for violation of rules, and

(10) Number and percentage of analyzers found malfunctioning (out of calibration, leak problems, etc.) during the most recent audit cycle.

VIII. Effectiveness Tracking and Evaluation

If EPA decides to adopt a separate enhanced I/M requirement, each enhanced I/M area will be required to commit to conducting an annual self-evaluation. The date for submitting the evaluation results each year would be specified in the SIP.

If a separate enhanced I/M requirement is adopted, a random roadside or equivalent fleet survey will be required annually by each enhanced I/M area to measure the emission failure rate and the tampering rate for those model years and components which are covered by the enhanced I/M program. The survey methodology must be approved in advance by EPA.

The tampering rate found in the survey will be compared to what the emission factor model predicts under national average conditions or, if available, to local rates from recent, pre-enhancement, EPA-approved surveys.

Emission results from the survey will be used to calculate an expected failure rate for the I/M program. This expected failure rate, and the roadside tampering rate will then be used, along with the program's reported failure rate, compliance rate, and waiver rate to determine whether the program's emission reductions meet the level of the SIP commitment. The guidelines for performing the numerical analysis are contained in the report entitled "Method for Determining Required Emission Reduction Compliance in Operating Inspection/Maintenance Programs."

If the emission reductions do not meet the level for which credit is claimed in the SIP, a corrective plan must be submitted to EPA within 3 months of the annual evaluation date. The corrective actions must be implemented by the next annual evaluation. If the SIP-approved levels of effectiveness are not being met at the time of the next evaluation due to a continuation of the previous identified problems, EPA would then initiate the process of proposing appropriate sanctions.

Appendix F.—Glossary of Terms

Term	Definition
Adjacent rural area	A county with monitored ozone violations touching an MSA measuring nonattainment.
ASTM	American Society for Testing & Materials.
Attainment demonstration	A documented prediction that emissions reductions from local and national measures will be sufficient to reduce pollutant concentrations ozone to levels at or below the NAAQS by a fixed, certain date.
Attainment inventory level	The total emission inventory at the time an area attains the NAAQS.
CAA	Clean Air Act, as amended 1977.
CMSA	Consolidated Metropolitan Statistical Area.
CO	Carbon Monoxide.
CTG	Control Technique Guideline document: Guidance documents published by EPA describing RACT for selected VOC sources.
Design value	The current air quality "design value" is the ozone level which represents the degree to which the 0.12 ppm NAAQS is exceeded. Where 3 years of complete data (i.e., at least 75 percent of the days during the ozone season having valid daily maxima) exist at a site, the site-specific design value is the fourth highest measured ozone level during the period. For 2 years of complete data, it is the third highest, and for 1 year of complete data, it is the second highest. Most cities had 3 years of complete data. In the case where there is more than one monitoring site, the design value for the MSA or CMSA is the highest of the site-specific design values.
EKMA	Empirical Kinetic Modeling Approach, an urban-scale, simplified atmospheric simulation model relating VOC and NO_x to ozone, used to predict the level of control required to attain.
Enhanced I/M	An inspection/maintenance program achieving additional emission reductions from increases to the coverage and stringency of inspection and management practices.
Extension area	An area that received EPA's approval to an extension under section 172(a)(2) of the Act to provide for attainment of the ozone or CO NAAQS by December 31, 1987.
FMVCP	Federal Motor Vehicle Control Program: A program of federally-required vehicle emission controls that reduce exhaust and evaporative emissions.
Hot spot	A CO problem limited to local violations of the CO standard and correctable by short-term, local transportation control measures.
I/M	Inspection and Maintenance, a program requiring testing or inspection and repair of vehicles failing test or inspection.
Isolated rural area	A county which is (1) not within or adjacent to a nonattainment MSA and (2) contains a site measuring violations of the NAAQS.
LAER	Lowest Achievable Emission Rate, applicable to new major sources or major modifications subject to new source review.
Long term area	An area that cannot demonstrate attainment of the standards within 3 years of EPA approval of the SIP.
Major source	A stationary source of pollution with a potential to emit 100 tons/year or more (uncontrolled) of a pollutant (e.g. VOC's).
MOBILE3, MOBILE4	A computerized matrix of highway vehicle emission factors used to generate mobile source emissions in an area.
MSA	Metropolitan Statistical Area: An area meeting standards established by OMB to refer to urban areas generally with populations over 50,000.
NAAQS	National Ambient Air Quality Standard.
NAAS	National Air Audit System: The coordinated effort by EPA and States in which SIP status, implementation, and compliance are reviewed annually.
NMOC	Nonmethane Organic Compound.
NMOC/NO_x ratio	An indicator useful for predicting the success of NO_x reductions to assist VOC controls.
Nonattainment area	Any area measuring violations of the NAAQS.
Nonextension area	An area that did not receive EPA's approval of an extension under section 172(a)(2) to provide for attainment of the ozone or CO NAAQS after 1982 but by December 31, 1987.
NO_x	Nitrogen Oxides.
NSR	New Source Review.
OAQPS	EPA's Office of Air Quality Planning and Standards.
O_3	Ozone.
Part D	A major part of the Clean Air Act specifying requirements for designated nonattainment areas.
PSD	Prevention of Significant Deterioration.
RACT	Reasonably Available Control Technology.
Reasonable efforts	The "test" in section 176(a) of the Act of whether the 176(a) sanctions should be applied. Used in the policy, the test is applied to areas with longer term attainment dates to determine whether any additional sanctions (beyond the construction ban) are applicable.
Redesignation	The process by which an area's designated nonattainment status is changed to attainment.
Reporting year	The year covered in the annual reasonable further progress (RFP) report.
RFP	Reasonable further progress: A term defined in Part D of the Act meaning annual emission reductions, including substantial reductions in early years. In the policy, RFP means the required rates of progress applicable to long-term areas.
ROM	Regional Oxidant Model: A regional-scale photochemical grid model used to estimate ozone concentrations over a broad geographic area.
RVP	Reid Vapor Pressure: A measure of the volatility of petroleum liquids (e.g., gasoline).
SIP	State Implementation Plan.
SIP call	A process by which EPA notifies a State that its SIP is substantially inadequate and requires corrective action.
TCM	Transportation Control Measure.

Term	Definition
Transport	Term referring to the movement by the wind flow of ozone and/or its precursors (VOC and NO_x) from a source area to an impact area several hours to several days downwind.
Urban Airshed Model	An urban-scale photochemical grid model used to estimate ozone concentrations, typically in an urban area.
Urbanized area	A term used by the Census Bureau for a central city or cities, generally of at least 50,000 inhabitants, and surrounding closely settled territory.
VOC	Volatile Organic Compound.
VMT	Vehicle Miles Travelled: Estimates of the distances driven by highway vehicles in an area used in combination with MOBILE 3 or MOBILE 4 emission factors to generate total mobile source emissions.

Appendix G—Regional Office Contacts

Mr. John Hanisch, Chief, State Air Programs Branch, EPA Region I (APB–2311), J.F.K. Federal Building, Room 2303, Boston, Massachusetts 02203–2211

Mr. William Baker, Chief, Air Programs Branch, EPA Region II (Room 1005), Federal Office Building, 26 Federal Plaza, New York, New York 10278

Mr. Jesse Baskerville, Chief, Air Programs Branch, EPA Region III (3AM10), 841 Chestnut Building, Philadelphia, Pennsylvania 19107

Mr. Bruce P. Miller, Chief, Air Programs Branch, EPA Region IV, 345 Courtland, NE., Atlanta, Georgia 30365

Mr. Steve Rothblatt, Chief, Air & Radiation Branch, Air Management Division, EPA Region V (5AR), 230 South Dearborn, Chicago, Illinois 60604

Mr. Jack Divita, Chief, Air Programs Branch, EPA Region VI (6T–A), Allied Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202–2733

Mr. Carl M. Walter, Chief, Air Programs Branch, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101

Mr. Douglas M. Skie, Chief, Air Programs Branch, Air and Waste Management Division, EPA Region VIII (8AT–AP), 999 18th Street, Denver Place—Suite 500, Denver, CO 80202–2405

Mr. David Calkins, Chief, Air Programs Branch, Air Management Division, EPA Region IX (A–2), 215 Fremont Street, San Francisco, California 94105

Mr. George Abel, Chief, Air Programs Branch, Air and Waste Management Division, EPA Region X (M/S–532), 1200 Sixth Avenue, Seattle, Washington 98101

Mr. Frank Giaccone, Chief, Air Compliance Branch, EPA Region II, Federal Office Building, 26 Federal Plaza, New York, New York 10278

Mr. Larry Kertcher, Chief, Air Compliance Branch, Air Management Division, EPA Region V (5 AC), 230 South Dearborn Street, Chicago, Illinois 60604

Mr. Tom Rarick, Chief, Air Operations Branch, Air Management Division, EPA Region IX, 215 Fremont Street, San Francisco, California 94105

Mr. Marvin Rosenstein, Chief, Technical Support Branch, Air Management Division, EPA Region I (ATS–2311), J.F.K. Federal Building, Room 2203, Boston, Massachusetts 02203

Mr. Bernard Turlinski, Chief, Air Enforcement Branch, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107

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Appendix H—Selected EPA Guidance for SIP Development

The following list identifies selected EPA guidance for SIP development.

—Administrator's comprehensive SIP revision guideline memorandum February 24, 1987 (43 FR 21673, May 9, 1978)

—General Preamble for proposed rulemaking on approval of plan revisions for nonattainment areas (44 FR 20372, April 4, 1979)

—Final Policy—Criteria for Approval of 1982 Plan Revisions (46 FR 7192, January 22, 1981)

—Final action on rulemaking—compliance with statutory provisions of Part D of the Clean Air Act, (48 FR 50686, November 2, 1983)

—I/M Policy Memorandum from David Hawkins to Regional Administrators, July 17, 1978

—Guidance document for correction of Part D SIP's for nonattainment areas, OAQPS, January 27, 1984

—CTG RACT applicability, memorandum from Darryl D. Tyler to Regional Air Directors, June 25, 1984

—Redesignation criteria, memorandum from Sheldon Meyers to Regional Air Division Directors, April 21, 1983

—Memorandum of Understanding Between DOT and EPA regarding the integration of Transportation and Air Quality Planning, June 1978

—EPA-DOT Transportation-Air Quality Planning Guidelines, June 1978

—EPA-DOT Expanded Public Participation Guidelines, June 23, 1980 (45 FR 42023)

—DOT-EPA Procedures for Conformance of Transportation Plans, Programs and Projects with Clean Air Act State Implementation Plans, June 12, 1980

—Policy and Procedures to Implement Section 316 of the Clean Air Act, as Amended, memorandum from Douglas M. Costle to Regional Administrators, Region I–X, July 23, 1980 (45 FR 53382)

—40 CFR Part 51, Subpart M—Intergovernmental Consultation, June 18, 1979 (44 FR 35176)

—Guidance document for Post 87 CO/Ozone SIPs (to be completed)

a. Improving Existing Program Effectiveness

Source surveillance and inspection
Rule/measure evaluation procedures
Regulation effectiveness guidance
Ambient monitoring- site selection, q.a., data validation Ozone and NMOC

b. Measures

Enhanced Inspection/Maintenance
Basic Inspection/Maintenance
Stationary Source RACT
CTG's I, II, III—currently available
Presumptive RACT
Guideline for Developing Enforceable Emission Regulations
Stage II regulations
New Source Review
Transportation Control Measures
Effectiveness credit/monitoring program

c. Demonstration of Attainment

Development of local Emissions Reduction Slope and attainment date criteria
Emission Inventory Requirements for Post–87 Ozone/CO SIPs
Methods for determining effectiveness credits
Modeling—EKMA : Airshed : ROM
CO modeling : Mobile3/4
General Strategy Considerations planning areas vs control areas growth projections, documentation, and population consistencies:
NO_x control strategies
Isolated rural area—ozone self generation determinations

d. Measuring and Assuring Continued Progress

Revised Guidelines for Tracking Reasonable Further Progress in Ozone/CO Control Programs
Continuity of control measures
Establishment of emissions ceiling and growth impact
Segment Revisions—Validation of previous segment & next segment's refinement
Future SIP revisions/demonstrations

Appendix I—Modeling Procedures and Data Base Requirements to Support Post-1987 Ozone Policy

I. Introduction

The EPA is proposing procedures addressing the need to reduce ozone (O_3) in locations which fail to meet the NAAQS for O_3 by December 31, 1987. One part of the proposal requires MSA's not in attainment of the NAAQS to determine how much additional reduction in O_3 precursors (i.e., VOC and, in some cases, NO_x) is needed to attain the NAAQS. This determination is to be made using one of two modeling approaches. The first is photochemical grid modeling. The preferred model is the Urban Airshed Model, described in *Guideline On Air Quality Models (Revised)* (Reference 1), in *SAI Airshed Model Operations Manual* (Reference 2), and in *Guideline For Applying The Airshed Model To Urban Areas* (Reference 3). Input requirements for the Urban Airshed Model are described in References 1 and 2. Minimum data bases needed to satisfy these requirements are likely to vary, depending on the complexity of the situation being simulated. Thus, a minimum data base to support an Urban Airshed Model application must be determined on a case-by-case basis in consultation with the appropriate U.S. EPA Regional Office.

The second acceptable modeling approach is use of the EKMA. The EKMA model and its application in SIP's is described in the *OZIPM4 Users Manual* (Reference 4), and in the *Guideline for Use of EKMA in Post-1987 SIP Applications* (Reference 5). The purpose of this notice is to briefly describe the EKMA modeling approach and to identify data base requirements to support the use of EKMA in post-1987 SIP's for O_3. In order to explain why these data are needed, it is useful to briefly describe the conceptual basis for the model.

II. Model Description

The model underlying EKMA simulates chemical reactions in a well mixed column of air containing initial concentrations of precursors and O_3 from the city being simulated. The simulation begins at 8 a.m. Local Civil Time (LCT). At this time, the column is assumed to be located over the center of the city being modeled. Subsequently, the column migrates at a uniform speed from center city to that O_3 monitoring site observing the maximum O_3 concentration on the day being modeled, so that the column arrives over this site at the time of the observed maximum concentration. As the column moves, precursor emissions [114] are injected into it from sources in the county or counties traversed by the column. In addition, the height of the column increases to simulate diurnal growth in the surface mixing layer. As a result, two things happen: (1) O_3 and precursor concentrations already within the column become diluted; and (2) O_3 and precursors aloft (presently due to transport from sources located upwind from the city being simulated) are entrained into the column to participate in subsequent chemical reactions.

The scenario described in the preceding paragraph is repeated numerous times. On each such occasion, all model inputs are kept constant, except for initial concentrations of NMOC, NO_x and emissions of VOC and NO_x. As a result, O_3 isopleth diagrams can be drawn. These diagrams plot maximum hourly O_3 as a function of initial NMOC and NO_x, and fresh VOC and NO_x emissions, (i.e., post-8 a.m. emissions). Each O_3 isopleth represents a constant concentration of O_3. VOC and/or NO_x control estimates are obtained by determining the relative reduction in VOC and/or NO_x needed to move from an observed O_3 concentration to the level specified in the NAAQS (i.e., the 0.12 ppm O_3 isopleth) as illustrated in Figure 1.

[114] Volatile organic compounds, nitrogen oxides, and carbon monoxide (CO).

III. Model Inputs

Control estimates obtained with EKMA depend on three things:

(1) Starting point on the isopleth diagram;

(2) Shape and spacing of the O_3 isopleths; and

(3) Changes in inputs affecting the shape and spacing of the isopleths between the base period (i.e., present) and projected period (i.e., future).

The first two of these factors can be affected by the data base used to support EKMA analyses, and are elaborated upon below. The third factor depends on projections of these inputs, and is described in references 4 and 5.

A. Starting Point on Diagram

The starting point on the diagram depends on two inputs:

(1) Maximum hourly O_3 concentration observed on the day and at the site being modeled; and

(2) A representative value for the NMOC/NO_x ratio observed before the onset of photochemistry in locations with high precursor concentrations (i.e., having the greatest potential to lead to high subsequent O_3 concentrations).

B. Shape and Spacing of Isopleths

Shape and spacing of the isopleths depend on the following model inputs:

(1) The chemical mechanism (i.e., a sequence of chemical reactions which describes atmospheric chemistry by which ozone forms) used in the model. The Carbon Bond 4 (CB4) mechanism will be used in regulatory applications of EKMA. This mechanism is presented in Reference 4. Reasons underlying its selection are outlined in Reference 6.

(2) Composition (i.e., reactivity) of the ambient NMOC and NO_x. In most cases, a default composition will be used for NMOC. The recommended default composition is based on NMOC species analyses performed on samples collected in 35 cities during 1984–86. In certain extraordinary cases, a city-specific NMOC composition may be used after consultation with, and approval of, the appropriate EPA Regional Office. The default recommendations, their basis, and possible reasons justifying use of city-specific values are outlined in References 5 and 7. For EKMA applications, the composition of fresh VOC emissions is assumed to be identical to the measured composition of initial urban NMOC. The fraction of initial NO_x and NO_x emissions which is NO_2 may also be specified as described in References 4 and 5.

(3) Amount of fresh VOC, NO_x, and CO emissions (i.e., "post-8 a.m."

emissions) injected into the hypothetical column of air. Calculation of "post-8 a.m." emissions for use in the model is described in Reference 5.

(4) Sunlight intensity and Ultraviolet (UV) wavelength distributions. As described in References 5 and 8, these are calculated by the program once the user specifies the date and location (i.e., latitude, longitude, and time zone) being simulated.

(5) Atmospheric dilution. Dilution is considered by increasing the height of the mixing layer during the day. In accordance with References 4 and 5, the user specifies an 8 a.m. and daily maximum mixing height and the time at which the increase in the mixing height begins. As described in Reference 5, default values are recommended for minimum 8 a.m. mixing height, since physically induced turbulence from urban structures may cause mixing estimates derived from city-specific measured temperature soundings (usually taken at rural or suburban locales) to be too low at this time of day.

(6) Transport. Shape and spacing of isopleths can be influenced by concentrations of O_3 and NO_x, as well as by the concentration and composition of NMOC, transported from upwind sources. Transported pollutants can be present initially within the surface-based column, as well as within a layer of air above the surface mixing layer. As the simulation proceeds, the layer of air aloft containing transported pollutants gets entrained into the column as a result of the increase in mixing height. Day-specific values for transported O_3 can be estimated from data routinely obtained by an air quality monitoring network meeting certain minimal requirements, to be described subsequently. For the urban model applications for which EKMA is intended, transported NO_x can be assumed to be negligible. Transported levels and composition of NMOC are generally not available from routine measurements. Default recommendations are provided as described in References 5 and 7.

IV. Minimum Data Base Recommendations

In order to provide the input information needed to provide reliable control estimates with EKMA, State/local agencies are urged to compile data bases consistent with certain minimum recommendations. These recommendations are identified below.

A. Emissions Data

Emissions data are needed to estimate hourly values for "post-8 a.m." VOC, NO_x, and CO emissions input to the model. In addition, since a key model output is the percent reduction in VOC and/or NO_x emissions needed to attain the O_3 NAAQS, the base period emission inventory must be accurately known in order to derive appropriate absolute emission targets. Further, these targets are arrived at after an assessment of changes in CO emissions has been made. These latter two uses require that VOC, NO_x, and CO emission inventories be compiled for the entire MSA. Emission inventory recommendations for post-1987 SIP's are described in greater detail in Reference 9.

1. *Temporal Resolution of VOC, NO_x, and CO Emissions.* Diurnal patterns of VOC, NO_x, and CO emissions (on an hour-by-hour basis) are needed. Detailed procedures for deriving temporally resolved emission inventories for use with EKMA are described in Reference 10.

2. *Spatial Disaggregation of Emissions.* Spatial disaggregation of emissions on a countywide basis is recommended. Ordinarily, all surface or near-surface emissions within the county in which the simulated column of air is located are assumed to be injected into the column. In addition, separate consideration of emissions from large point sources expected to have effective stack heights greater than 250m is recommended so that subsequent entry of these plumes into the surface mixed layer can be considered by the model. Consideration of such sources is described in Reference 5. In cases where very large counties exist in which the bulk of emissions is concentrated in a portion of the county, subcounty emission allocations are recommended. These subcounty allocations should cover an area no larger than the area traversed by EKMA's simulated column of air on the day being modeled.

3. *Disaggregation of VOC Emissions by Chemical Species.* It is not necessary to speciate VOC emissions for applications of EKMA. As described earlier, a composite default composition for VOC emissions is assumed. Nevertheless, certain organic compounds deemed "unreactive" should be excluded from the VOC inventory estimate. These compounds are identified in Reference 9.

B. Air Quality Data

1. *O_3 Monitors (at Least Five Sites).* Five monitoring sites employing reference or equivalent methods for measuring O_3 (Reference 11) are recommended as a minimally acceptable network. The sites should not be influenced by microscale impacts. O_3 monitoring data are needed to support EKMA analyses in two ways. First, the data depict high daily maximum O_3 within and downwind of the MSA being modeled. Daily maximum O_3 concentration is one of two pieces of information needed to establish a starting position on an EKMA isopleth diagram. The second use for O_3 data is to estimate the amount of O_3 transported to the modeling domain from upwind sources. These data are used, as described in References 4 and 5, to estimate O_3 transport input to the model.

Daily maximum O_3 needs to be accurately characterized under a variety of meteorological scenarios (e.g., steady winds, stagnations, etc.). This is necessary, because control estimates to reduce O_3 to the level of the NAAQS may be greater under some circumstances than others. That is, there is not necessarily a 1:1 correspondence between extent of needed control measures and severity of the O_3 problem on individual days. Further, a network addressing several likely meteorological scenarios is needed to provide greater assurance that the NAAQS is being attained when the expected "exceedance" rate is ≤ 1.0 at each site. The network design suggested below addresses several sets of conditions representing winds of varying velocities and persistence.

1 Monitor: 10–30 miles in the predominantly upwind direction from the city limits. Minimum distance upwind should be determined on a case-by-case basis, depending on city size and surroundings. Data from this monitor are to be used primarily to estimate O_3 transported to the model domain from upwind sources

1 Monitor: Near the predominantly downwind edge of the city limits

1 Monitor: 10–20 miles from the city limits in the predominantly downwind direction

1 Monitor: 20+ miles from the city limits in the predominantly downwind direction

1 Monitor: 10–30 miles in the second most prominant downwind direction

2. *NMOC Monitors (at Least Two Sites).* Ambient NMOC data are needed to estimate the NMOC/NO_x ratio, as described in Reference 5. This ratio is the second of two pieces of information needed to establish a starting point on an EKMA O_3 isopleth diagram. NMOC should be sampled at at least two monitoring sites. (In certain cases, subject to review and approval of U.S. EPA Regional Offices, one NMOC monitor would be acceptable.) These sites should be located so as to

characterize maximum O_3 forming potential in an MSA. This is best done by neighborhood scale monitoring sites (as described in Reference 12) located in areas with highest emission density of VOC and NO_x emissions. As described in Reference 13, reviews of existing NMOC/NO_x ratio data suggest day-to-day variability in the ratios of individual sites, as well as differences between sites on individual days. Because it is desirable to utilize as representative a ratio as possible as input to the model, sampling at at least two sites is recommended. Samples should be taken continuously between 6–9 a.m. LCT and analyzed within one week of collection. Samples should be taken on weekdays for at least a 3-month period during the summer or during the 3-month period of expected peak O_3 concentrations. Because modeling will consider more than 1 year of O_3 data, State/local agencies are urged to sample and analyze NMOC for several years. Since a major purpose of collecting NMOC data is to estimate NMOC/NO_x ratios, NMOC sampling sites must be collocated with NO_x monitors.

NMOC samples may be analyzed by Gas Chromatograph (GC) and summing the species concentrations up to and including C_{12} species, or by the Cryogenic Preconcentration/Direct Flame Ionization Detection (PDFID) method, described in Reference 14. Results obtained with PDFID agree closely with those obtained with GC sum-of-species (Reference 15). Data obtained with other analytical techniques are acceptable only if they can be shown to agree closely with results obtained with the GC sum-of-species or PDFID methods (Reference 16).

3. *NO_x Monitors (at Least Two Sites).* Like NMOC data, ambient NO_x data are needed to estimate NMOC/NO_x ratios, as described in Reference 5. As such, NO_x monitors must be located at NMOC sampling sites. Appropriate siting considerations have been described previously. NO_x should be sampled and analyzed continuously, using instruments operated in accordance with specifications outlined in Reference 11. Because NO_x concentrations are lower than NMOC levels, the NMOC/NO_x ratio is more sensitive to small differences in measured NO_x levels than is the case for NMOC. Thus, it is essential that NO_x data collected for use with EKMA be subject to rigorous quality assurance procedures. Audit checks are recommended (at continuously operated sites) within 30 days prior to start-up of NMOC sampling programs. Audits should cover nitrogen dioxide (NO_2) and nitric oxide (NO), as well as NO_x. Appropriate corrective actions should be taken as soon as possible.

4. *CO Monitor (at Least One Site).* Ambient CO data collected during the ozone season is needed, because presence of CO may affect ozone formation, particularly after VOC emissions have been drastically reduced. The CO data input to the model must be representative of a neighborhood scale (Reference 12). It is preferable that the CO monitor be located near one of the NMOC and NO_x sampling sites.

C. Meteorological Data

1. *Upper Air and Surface Temperature and Pressure Data.* The EKMA model requires estimates of 8 a.m. LCT surface mixing layer height, as well as the time of occurrence and depth of the daily maximum surface mixing layer. Mixing heights can be estimated using National Weather Service rawinsonde data (if available), together with surface temperature and pressure data. Surface temperature and pressure data should be collected at at least two properly exposed sites. The first of these should be influenced by urban heat island effects, characteristic of locations having highest densities of VOC and NO_x emissions. The second should be at the rawinsonde site. Appropriate instrumentation and further siting considerations are described in Reference 17. Procedures for estimating mixing heights are described in Reference 5. If rawinsonde data are not available, 8 a.m. and maximum afternoon mixing heights can be estimated using Reference 18.

2. *Surface Wind Data.* Surface wind data are needed to assure that an underlying assumption in EKMA is correct. That is, wind data are used to establish that a monitor observing a daily maximum O_3 concentration is indeed down-wind from the modeled city and/or is likely to be impacted by the city's emissions. This determination is made using surface wind data to compute resultant wind velocities during certain times of day (Reference 5). As described in Reference 5, resultant wind velocity is one of several factors used in establishing suitability of a particular day for modeling with EKMA and culpability of upwind MSA's for the observed high ozone on the day in question.

In order for wind data to be suitable for use as described above, it should be monitored and recorded continuously at at least two properly exposed sites not subject to microscale influences. Criteria for acceptable surface wind measurements are contained in Reference 17. Most appropriate locations for surface wind monitors may vary from case to case. However, generally, one should be at the rawinsonde site (or local airport), and a second should be in the predominantly downwind direction near the site of expected highest ozone.

V. Summary

The following data bases are recommended for regulatory applications of EKMA. All data should be carefuly quality assured.

A. Emissions Data (Section IV.A).

- Seasonally adjusted hourly emission rates of VOC, NO_x, and CO.
- Emissions for the entire MSA, spatially resolved on a county basis, will usually suffice.
- Emissions from sources with effective stack heights greater than 250m should be identified.
- Organic species identified by EPA in previous **Federal Register** notices as "unreactive" should not be included in the inventory.

B. Air Quality Data (Section IV.B).

- At least five continuously operated reference or equivalent ozone monitors.
- At least two NMOC sampling sites, with samples analyzed using GC sum-of-species or the PDFID technique.
- At least two continuously operated reference or equivalent NO_x monitors so that NO_x, NO, and NO_2 are measured or estimated at each NMOC sampling site.
- At least one neighborhood scale reference or equivalent CO monitor located as near as possible to one of the NMOC and NO_x sampling sites.

C. Meteorological Data (Section IV.C).

- At least two surface temperature monitoring sites.
- At least two surface pressure monitoring sites.
- At least two sites with continuously measured and recorded surface wind velocities.

VI. References Cited

1. U.S. EPA, *Guideline On Air Quality Models (Revised),* EPA–450/2–78–02/R, July 1986.

2. Ames, J.; T.C. Meyer; L.E. Reid; D. Whitney; S.H. Golding; S.R. Hayes; and S.D. Reynolds, *SAI Airshed Model Operations Manuals,* NTIS Publication Numbers PB85–292567 and PB85–191568, 1984.

3. U.S. EPA, *Guidelines For Applying The Airshed Model To Urban Areas,* NTIS Publication Number PB81–200529, 1980.

4. In Preparation. This will be similar to *User's Manual For OZIPM2,* EPA–450/4–84–024.

5. In Preparation. This will be an updated version of *Guideline For Use Of City-specific EKMA In Preparing Ozone SIPs*, EPA–450/4–80–027, to reflect post-1987 policy concerning use of EKMA with the CB4 or CALL mechanism.

6. In Preparation. This will be a memo describing reasons for selecting the chosen mechanism.

7. In Preparation. A memo with an attached analysis in which default recommendations are derived.

8. Jeffries, H.E. and K.G. Sexton, *Technical Discussion Related To The Choice Of Photolytic Rates For Carbon Bond Mechanisms In OZIPM4/EKMA*, EPA–450/4–87–003, February 1987.

9. U.S. EPA, OAQPS: *Emission Inventory Requirements For Post 1987 Ozone SIPs*, in preparation.

10. U.S. EPA, OAQPS, *Procedures for Preparation of Emission Inventories for Volatile Organic Compounds, Volume I*, 3rd Edition, in preparation.

11. *Code Of Federal Regulations 40* Part 58, Appendix A.

12. *Code Of Federal Regulations 40* Part 58, Appendix D.

13. Baugues, K., *A Review Of NMOC, NO_x And NMOC/NO_x Ratios Measured in 1984 And 1985*, EPA–450/4–86–015, September 1986.

H.G. Richter, *A Cryogenic Preconcentration-Direct FID (PDFID) Method For Measurement Of NMOC In Ambient Air*, NTIS Publication Number PB–120631, October 1985.

15. Richter, H.G.; F.F. McElroy; and V.L. Thompson, "Measurement Of Ambient NMOC Concentrations In 22 Cities During 1984," *Paper 85–22.7*, presented at 78th Annual APCA Meeting, Detroit, Michigan, June 1985.

16. Rhoads, R.G., Memorandum to U.S. EPA Regional Office Air, Environmental Services, and Policy and Management Division Directors, Subject: "Discontinuance of Funding for State Operation of NMOC Continuous Analyzers," March 10, 1986.

17. U.S. EPA, OAR, OAQPS, *On-Site Meteorological Program Guidance for Regulatory Model Applications*, (Draft), December 1986.

18. Holzworth, G.C., *Mixing Heights, Wind Speeds And Potential For Urban Air Pollution Throughout The Contiguous United States*, AP–101, U.S. EPA, Research Triangle Park, North Carolina, January 1972.

Appendix J—Other Measures for Improving Existing Programs

This appendix lists a number of measures that have been identified which will improve existing VOC control program effectiveness. In many cases, these are continuations and improvements to existing programs being carried out by EPA and States.

a. Monitor and Correct Problems in Inspection/Maintenance Programs

The EPA audits of inspection/maintenance programs over the past 3 years as part of the National Air Audit System have identified both considerable accomplishments by State and local agencies in establishing and operating I/M programs successfully, and a variety of operating problems. The operating problems fall into the categories of improper testing, incomplete enforcement of the requirement to be tested on schedule, and poor repair effectiveness for vehicles which fail the test. The latter manifested by high repair waivers or small emission reductions from vehicles not waived. Additional emission reductions which will contribute towards ozone and carbon monoxide attainment are possible from correction of these operating problems. In some I/M programs the losses in potential emission reductions are small, but in others they are substantial.

The EPA will take action on the operating problems in a particular I/M program whenever it appears that the combined losses due to those operating problems are so large that the program is not achieving the minimum emission reductions that were originally required for SIP approval. These reductions (25 percent of passenger car exhaust hydrocarbon and 35 percent of passenger car carbon monoxide) were established by a series of EPA policy memos beginning in 1978 based on the legislative history of Clean Air Act section 172(b)(11)(B).

The EPA has already taken action on certain I/M programs, and further actions will follow the same course. In such actions, EPA will inform the affected State that its operating problems have caused the I/M program to fall short of the required reductions and will request expeditious submittal of a corrective plan for the I/M program. The corrective plan shall provide a schedule of commitments to take specific measures of the State's own choosing to address the operating problems identified. The corrective plan would not have to be a formal SIP revision, but if a State did not submit an acceptable plan EPA would make a formal call for a SIP revision so as to begin an appropriate sanction process. Failure to provide such a corrective revision ultimately would result in a finding of SIP inadequacy and, where appropriate, a finding of failure to make reasonable efforts to submit an adequate SIP revision or a finding of SIP non-implementation. If a State did submit a corrective plan, but the State's corrective actions were not successful within a reasonable period, EPA would make a formal SIP call for specific program changes that, while perhaps more difficult to achieve, would have a higher likelihood of success than those tried by the State.

Many I/M programs were originally designed to provide more emissions reductions that the minimum required for SIP approval. Such programs might experience moderate or even large operating problems without affecting emission reductions to the point of becoming subject to the process just described. The EPA will continue to encourage and support the States' efforts to reduce operating problems in such programs, but will not request corrective plans or formal SIP revisions.

Elsewhere in this notice, new requirements relating to the improvement, or "enhancement," of I/M programs in post-1987 nonattainment areas are proposed. These requirements include a periodic assessment of program achievements which will supersede the process described above once a State has submitted and received approval for its improved I/M program.

b. Improve the Skills of Implementing Personnel

Due to the complexity of VOC control systems, EPA, State and local agencies must have staff capable of making determinations regarding such matters as compliance and application of LAER. The EPA intends to organize a workgroup comprised of representatives of State and local air pollution control agencies to meet periodically to assess which VOC compliance issues need special attention and to determine the best way to address each one. This would lead to new programs to increase the training of staff and to disseminate new guidance on such diverse topics as how to review plant records, what reporting is useful, and how to perform capture efficiency calculations.

In addition to upgrading the VOC training program, EPA has committed to use the VOC Reasonably Available Control Technology (RACT) Clearinghouse to disseminate and solicit information pertinent to the post-1987 ozone policy. To the extent practicable, EPA will use the Clearinghouse Newsletter or other appropriate documents to publish summaries of relevant meetings, policy and guidance memoranda issued from EPA's Office of Air Quality Planning and Standards, lists of ongoing VOC projects within EPA and the States, updates on the

implementation of VOC control programs in local areas, and information on State RACT determinations for sources not covered by EPA CTG's. EPA is considering requiring State and local participation in the Clearinghouse as part of the 1988 grant negotiations so that the Agency can disseminate this information more widely.

c. Enhance Federal and State Stationary Source Compliance Programs

The complexity of VOC regulations and the noncompliance status of many sources suggest the need for a more intense effort to ensure that sources understand and comply with the applicable rules. The EPA intends to improve the current compliance programs by issuing new guidance on how State and local agencies should focus their compliance efforts.

First, EPA will call upon State and local agencies to join EPA in a focused effort to get "significant violators" to comply with existing VOC rules. This group consists of sources subject to NSPS and "Class A" sources (sources emitting more than 100 tons per year, with or without controls). Beyond conducting its own program, the Agency will identify such violators for State and local agencies and monitor the progress that those agencies make toward achieving timely compliance.

Second, EPA will expand its overview of and technical support for State and local enforcement activity. The EPA expects to increase the number of Class A nonattainment area sources for which the Agency performs an overview of State and local inspections and increase its review of State and local agency files on those sources. The EPA expects that these program improvements would result in greater consistency in the States' application of existing VOC rules and greater emission reductions.

Third, EPA will call upon enforcing agencies to conduct annual, rather than the current biennial, inspections of nonattainment area sources with the potential to emit more than 100 tons per year without controls but less if controlled ("Class A2" sources).

Finally, EPA will work with enforcing agencies to assess the potential emission reductions that could be achieved by improving compliance rates of sources with potential uncontrolled emissions less than 100 tons per year ("Class B" sources). The EPA will be working with these agencies to develop innovative approaches to ensuring compliance of small sources (e.g., compliance assessment without requiring resource-intensive inspections at each source).

The EPA issued a memorandum entitled Small VOC Source Compliance Strategy on July 6, 1987. This program scheduled for implementation in FY 1988 provides a process for identifying VOC categories that are dominated by small but important contributor to ozone nonattainment. This nontraditional compliance approach consists of three components, which are (1) compliance promotion, (2) selected inspections, and (3) enforcement.

In general, compliance promotion consists of State and local agencies (along with EPA Regional Offices) implementing a campaign to ensure that small sources are aware of the problem and understand the VOC air quality requirements. To accomplish this, it will be necessary to identify small sources and then inform these sources of air quality requirements including needed control equipment or process changes.

The second component of the small source strategy is a selected inspection program that will provide State and local agencies and EPA with compliance information, and will establish a minimum enforcement presence. Resource limitations will not allow inspection of all small VOC sources even over a longer period of time. However, by using statistical sampling, a compliance data base can be developed by inspecting a relatively low number of small sources from selected small VOC source categories. Conducting selected inspections (as randomly as possible) of small sources in a VOC source category will provide an adequate estimate of the compliance rate for all of the small sources in that category.

The third component of the small VOC source strategy is to bring small violators back into compliance through enforcement follow up. One way of doing this is to give high media exposures to enforcement actions against selected violators. This should increase enforcement pressure and credibility. Another useful tool is an administrative fines program which would have the advantages of speed, flexibility, and certainty with the ability to set penalties appropriate to the nature of the violation.

d. Implement or Improve Permit Fee Program

Section 110(a)(2)(K) requires the SIP's to contain a requirement that the owner or operator of each major stationary source pay to the permitting authority as a condition of any permit refunded under the Act "a fee sufficient to cover" the reasonable costs of the permitting process and the implementation and enforcement of the permit. The EPA's 1981 Permit Fee Guideline (EPA–450/2–81–003) describes this requirement.

The EPA reviews of State and local permit fee programs have identified both considerable accomplishments in establishing and operating permit fee programs and major deficiencies. The EPA has found, for example, that while some agencies fully recover the cost of implementing permit programs, others still lack either the State authority or enforceable provisions in the SIP's for permit fees. Other agencies have the authority but have failed to implement it, and still others collect some fees but in such limited amounts that they fail to cover the full cost of issuing and implementing permits. Deficient programs not only deny to the State an important source of revenue in meeting their responsibilities under the Act but also impose inequities on adjacent States and hinder their efforts to develop adequate fee programs and comply with EPA guidance. States that have permit fee systems in their SIP's should assess the adequacy of those programs in terms of fees collected to assure that they are adequate to recover the full cost associated with reviewing, implementing, and enforcing permit conditions (except for court costs). States that do not have a permit fee system are encouraged to establish and operate such a program consistent with EPA's Permit Fee Guideline.

e. Upgrade Ambient Monitoring Networks

State and local agencies and EPA use air quality monitors to measure the ambient concentrations of ozone, nonmethane organic compounds (NMOC), and nitrogen oxides. These data are then used to determine attainment designations, to model ozone control strategies to determine their adequacy in reducing ozone concentrations, and to establish trends on how such concentrations change over thse. The EPA has established revised criteria that describe what constitutes an acceptable monitoring network for these purposes. The Agency intends to require some, but not all, States to implement a program that would require certain nonattainment areas to increase the number of NMOC monitors and the frequency of NMOC monitoring. The program would also require certain areas to increase the number of operational ozone monitors and, in some cases, to change the placement of those monitors.

Appendix K—Determining Attainment Dates

Long-Term Areas Subject to 3 Percent Reduction Requirement

The first step in projecting attainment dates is to determine the attainment level inventory. This is the inventory level to which the baseline emissions must be reduced for attainment to occur.

If using EKMA, multiply the baseline inventory, line 1(a) in the worksheet, by the modeled percent reduction target, line 1(b). The product is the amount by which the baseline emissions must be reduced to produce attainment. Enter in line 1(c). Subtract line 1(c) from the baseline, line 1(a). Enter the result as the attainment level inventory in line 1(d).

If using the Urban Airshed Model, typically one or more control strategies will be tested which produce attainment. Subtract the emissions reductions [115] associated with the preferred strategy from the baseline inventory. Enter the result as the attainment level inventory in line 1(d).

Next, the baseline inventory must be adjusted by subtracting out the requirements of EPA's pre-1987 guidance and any other measures approved into the SIP before today's action. But first, these measures must be adjusted for effectiveness. For each measure which has not been evaluated for effectiveness, multiply the expected reductions by 80 percent. For measures which have been evaluated, multiply the reductions by the effectiveness level determined by the evaluation. Total the reductions, enter in line 2(a), and subtract this total from the baseline inventory, line 1(a). Enter as the adjusted baseline inventory in line 2(b).

Now, the adjusted baseline is projected forward, first to 1992, then in 3-year increments (1995, 1998, 2001, etc.). This projection considers growth in emissions for any source affected by federally-implemented measures (FMVCP, RVP, onboard, etc.) and *only* the reductions from the federally-implemented measures and those local measures prescribed by EPA's pre-1987 guidance or approved into the SIP before the date this policy was proposed. Only growth in sources affect by federally-implemented measures is counted, since this is allowed to be offset as long as reductions occur from Federal measures. During this period, the local strategy must offset all other growth. Enter the projections starting in line 3(a) and continuing through 3(h) if necessary. The local strategy must continue to achieve a net 3 percent reduction per year on average, starting in 1988, offsetting all growth that occurs after the federally-implemented measures cease to provide net reductions (considering growth in sources affected federally-implemented measures). Although projections after this "low" point are not used to determine the attainment date, they are useful to show total the amount of growth to be offset by local control measures.

As discussed in the Policy Statement (Section IV.B.), States should provide for expeditious implementation of measures and emission reductions. However, as a practical matter, 1992 may be the earliest opportunity to assess compliance with the 3 percent annual reduction requirement. Therefore, for calculating the attainment date, the first "rate of progress" projection is made for 1992. Enter 15 percent of the adjusted baseline inventory in line 4(a). This is the amount of reductions required locally beyond the pre-1987 requirements, line 2(a). Subtract the 1992 baseline projection, or line 3(a), from the adjusted baseline, or line 2(b). If negative, enter zero. Enter in line 4(b). This is the net amount of reductions from federally-implemented measures, considering growth in sources affected by the federally-implemented measures. Add lines 4(a) and 4(b). Enter the sum in line 4(c). This is the net amount of reductions from all measures between the baseline and 1992. Subtract line 4(c) from the adjusted baseline. Enter the result in 4(d). This is the projected 1992 emissions level. Compare the result to the attainment level inventory. If attainment has not been reached, continue until one of the projected levels is equal to or below the attainment level.

Subsequent projections are made on the 3-year intervals in a similar fashion. Each 3-year interval adds another 9 percent net reduction to the local strategy (i.e., 24 percent in 1995, 33 percent in 1998, 42 percent in 2001, etc.).

If the attainment date appears to fall on one of the interim years in the 3-year projection period, baseline projections should be made for both of the interim years. Then, using the appropriate percentage values (24 percent in 1995, 33 percent in 1988, etc.) and following the procedure outline in lines 5(a) through 5(d), determine the projected "rate of progress." For each interim year, add 3 percent each year to the initial projection level (i.e., 24 percent in 1995, 27 percent in 1996, 30 percent in 1997, etc.). Add the local reduction to any incremental reductions from federally-implemented measures between this year and the previous year (use zero, if no reductions occurred) and add any reductions from federally-implemented measures in previous projection periods since the baseline. Total the reductions from the local and Federal measures. Subtract the total from the adjusted baseline. This is the projected inventory. Attainment is projected in the year where the projected inventory is equal to or below the attainment level inventory.

Short-Term Areas

Areas able to demonstrate attainment within 3 years after EPA approval of the SIP, or 4 years after the SIP due date, are not subject to the percent reduction requirement. For purposes of the short-term attainment demonstration, and to avoid the 3 percent annual requirement, these areas can only count reductions that would occur from federally-implemented measures, the pre-1987 SIP requirements, and any measures adopted (and EPA-approved) before today's proposal. Procedurally, this is the same as the baseline projection calculation (step 3) used by long-term areas except that the short-term area may consider all emissions growth (either positive or negative) in the emission projections. The attainment level inventory is determined in the same way as for long-term areas (step 1). However, it is not necessary to adjust the baseline inventory to remove the pre-1987 required reductions (step 2). As an example, assume a prospective short-term area has an unadjusted baseline inventory of 100,000 tons/year, and an attainment inventory of 85,000 tons/year. Projecting the baseline gives a 1992 inventory of 86,000 and a 1995 inventory of 84,000 tons/year. If the 1994 projections were at or below 85,000 tons/year, the area could successfully demonstrate attainment in the short term. However, as described in section IV.B. of the policy, the area could not supplement the baseline projections with additional local reductions in attempting to achieve the attainment level inventory in 1994, without being subject to the 3 percent annual reduction requirement beginning in 1988.

[115] These emission reductions must account for appropriate levels of effectiveness of measures contained in the strategy.

ATTAINMENT DATE WORKSHEET

	(Example)
1. (a) Unadjusted baseline (tpy)	103,000
(b) Percent reduction target (EKMA)	55
(c) Reductions required to attain. Multiply line 1(a) by line 1(b)	56,650
(d) Attainment level inventory. Subtract line 1(c) from line 1(a)	46,350
2. (a) Pre-1987 required measures (after adjustment for effectiveness)	3,000
(b) Adjusted baseline. Subtract line 2(a) from line 1(a)	100,000
3. Adjusted baseline projections. (Include effect of federally-implemented measures plus any growth in sources affected by federally-implemented measures.)	
(a) 1992	86,000
(b) 1995	83,000
(c) 1998	84,000
(d) 2001	86,000
(e) 2004	89,000
(f) 2007	92,000
(g) 2010	96,000
Steps 4 through 7 below apply only to long-term areas subject to the percent reduction requirement	
4. 1992 rate of progress projection:	
(a) Enter 15 percent of line 2(b)	15,000
(b) Subtract line 3(a) from line 2(b) (if negative, enter zero)	14,000
(c) Add lines 4(a) and 4(b)	29,000
(d) Subtract line 4(c) from line 2(b)	71,000
5. 1995 rate of progress projection:	
(a) Enter 24 percent of line 2(b)	24,000
(b) Subtract line 3(b) from line 3(a) (if negative, use zero). Add line 4(b)	17,000
(c) Add lines 5(a) and 5(b)	41,000
(d) Subtract line 5(c) from line 2(b)	59,000
6. 1998 rate of progress projection:	
(a) Enter 33 percent of line 2(b)	33,000
(b) Subtract line 3(c) from line 3(b).(If negative, use zero). Add line 5(b)	17,000
(c) Add lines 6(a) and 6(b)	50,000
(d) Subtract line 6(c) from line 2(b)	50,000
If line 5(d) is less than or equal to line 1(c), stop. Otherwise, go on	
7. Additional projections (2001, etc.):	
(a) Repeat step 5, adding 9 percent to line 5(a) for each successive projection (i.e., 42 percent for 2001, 51 percent for 2004, etc.).	
(b) Stop when projections are less than or equal to line 1(c). Attainment is expected to occur on or before the date of this projection.	

Appendix L—Determining "Rate of Progress" for NO_x—An Example

The post-1987 policy allows any area to adopt an NO_x-based control strategy, as long as the required VOC controls are also adopted and implemented. (The EPA expects most areas adopting NO_x strategies will adopt a combination VOC/NO_x strategy.) Long-term nonattainment areas which are subject to the 3 percent VOC annual reduction requirement and which adopt NO_x control strategies must determine an annual NO_x rate of reduction. This rate is required to result in attainment as expeditiously as a VOC-only strategy. The procedure for determining this rate is contained in Section IV.D, "Role of Nitrogen Oxides (NO_x)" in the Policy Statement. This Appendix describes the application of this procedure to the area in the Appendix K example.

Example

Assume that a long-term (beyond 1994) nonattainment area is submitting a post-1987 SIP with a combination VOC/NO_x control strategy. If the area were adopting only VOC control measures, the area would be subject to the annual 3 percent VOC reduction requirement. Since the area is adopting a combination VOC/NO_x strategy, an NO_x annual rate of reduction must be determined using the four-step procedure described in section IV.D of the policy.

Step 1—The area performs a modeling analysis to determine the attainment date which would result from a VOC-only control strategy achieving at least 3 percent per year. The attainment date is determined using Appendix K procedures. In the modeling analysis, the area can make assumptions regarding projected NO_x emission changes which are expected to occur if the State implemented no NO_x measures. (These could include the FMVCP, NSPS, growth or decline in NO_x-emitting sources, etc.) The Appendix K example area would need a 55 percent VOC reduction to attain and attainment would occur in the year 2000.

Step 2—This step requires a second modeling analysis to determine the VOC reduction target necessary to attain, based on the addition of NO_x reductions projected to occur from the locally-adopted NO_x control strategy. For this example, assume that the local NO_x measures are expected to achieve a 30 percent emission reduction. This reduction would be used as input to the model. Assume that, with this information, the analysis shows that a 40 percent VOC reduction will result in attainment.

Step 3—This step is where the NO_x annual reduction requirement is determined. The policy requires that the VOC/NO_x strategy achieve attainment as early as a VOC-only strategy. Therefore, the locally-adopted NO_x reduction is simply divided by the number of years required to attain (starting from the date of the SIP call) using only a VOC-based strategy. Hence, in the example, the local NO_x reductions (30 percent) are divided by

the number of years from the SIP call (1988) to attainment (2000), or 13 years. Note that the starting and ending years are included in the calculation, since the percent reduction applies to those years as well as to the years in between. Hence, the NO_x reduction requirement is 30 divided by 13, or 2.3 percent per year, rounded to the nearest tenth of a percentage.

Step 4—In this step, the alternate (lower) VOC annual reduction requirement is determined, since less overall VOC reduction is needed to attain, due to the addition of legally adopted NO_x control measures. For this step, federally implemented and pre-1987 requirements are excluded. In the example in Appendix K these measures account for a maximum of 17,000 tons/year reduction (17 percent) by 1995. (It does not matter that the reduction diminishes after 1995, since the local VOC strategy must offset any growth from 1995 on, in addition to achieving the required reduction rate.) Therefore, the locally-adopted VOC strategy must achieve the remainder of the overall reduction required to attain or 40 percent minus 17 percent, or 23 percent. The new VOC reduction requirement then becomes 23 divided by 13, or 1.8 percent per year, rounding to the nearest tenth of a percentage.

For purposes of determining compliance with the VOC and NO_x reduction requirements, EPA requires that, initially, by the 5th year from the SIP call (and subsequently at 3-year intervals) the State achieve the required reductions, to the nearest higher percentage point. In this example, then, the reductions which the State must show by 1992 would be found by multiplying 2.3 percent for NO_x and 1.8 percent for VOC each by 5. Thus, the reduction required by 1992 is 12 percent for NO_x (rounded up from 11.5) and, for VOC it is 9 percent (no rounding necessary). Similarly, the 1995 reduction requirements are 2.3 times 3, or 7 percent for NO_x (rounded up from 6.9), and 1.8 times 3, or 6 percent for VOC (rounded up from 5.4). By 1998, then, the cumulative reduction requirement would be 26 percent for NO_x (12+7+7) and 21 percent for VOC (9+6+6). The balance of the reduction needed to attain is then due by the end of the projected attainment year (2000), or 4 percent for NO_x and 2 percent for VOC.

Appendix M—Timing of Key Policy Requirements

By Category:

Event	Time allowed	Due date
1. Draft Emission Inventory	1 year	1 yr after SIP call.
2. Maximize Effectiveness of Existing Programs.	Up to 2 years	2 yrs after SIP call (submitted with initial SIP).
3. Pre-1987 Requirements (including adopted measures approved by EPA).	Up to 4 years (unless earlier implementation would advance attainment).	Up to 4 yrs after SIP call.
4. Post-1987 Requirements:		
a. Enhanced I/M (if applicable)	Up to 6 years (unless earlier implementation would advance attainment) (>.16 ozone or 17 CO earlier).	Up to 6 yrs after SIP call.
b. 3 Percent Annual Reduction Requirement	Starting year of SIP call ending year of attainment.	Compliance checked initially 5 yrs after SIP call, then every 3 yrs until attainment.
c. New CTG.'s	Min. 1 year to almost 2 years	Jan. after publication of CTG (if issued by previous Jan.).
d. Initial SIP:		
● Isolated Rural Areas Lacking AQ Data	Up to 2 years for CTG's I, II; 1 additional year for air quality analysis and measures, if required.	No later than 3 yrs after SIP call, except minimum RACT due in 2 yrs.
● Areas Needing Long-Term Measures	Up to 5 years to complete adoption	No later than 5 yrs after SIP call.
(except 2 yr SIP must include demonstration of attainment, identify long-term measures, fully adopt other measures)		
● All other areas	Up to 2 years	No later than 2 yrs after SIP call.
e. Revised SIP's and Attainment Demonstrations.	Approx. 6 years	Initially 7 yrs after SIP call, then every 6 yrs.
f. Governor's Commitment to Develop SIP	3 months	3 months after SIP call.
g. State/EPA Review of SIP Development	6 months	6 months after SIP call.
h. Implementation of CO Hotspot Measures	Up to 6 years	No later than 6 yrs after SIP call.
i. Implementation of Post-1987 RACT	Up to 6 years	No later than 6 yrs after SIP call.

By Due Date:

Due Date (after SIP call)	Event
3 months	Governor's commitment.
6 months	State/EPA review of SIP development.
1 year	Draft emission inventory.

Due Date (after SIP call)	Event
2 years	Initial SIP (except areas needing long-term measures; see above).
	Maximize effectiveness of existing program.
3 years	Air quality data and additional measures, if applicable—isolated rural areas lacking data.
4 years	Implementation of pre-1987 requirements (see above).
5 years	Adoption of long-term measures (SIP submittal).
	Compliance with 15 percent reduction requirement (long-term areas).
6 years	Implementation of enhanced I/M (see above).
	Implementation of CO hotspot measures.
	Implementation of post-1987 RACT.
7 years	Revised SIP and attainment demonstration.

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federal register

Tuesday
November 24, 1987

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 135 and 145

Revision of Foreign Repair Station Rules; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 135 and 145

[Docket No. 25454; Notice No. 87-12]

Revision of Foreign Repair Station Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to update the regulations for certificating foreign repair stations to accommodate the increasing demand for maintenance and alteration of U.S.-registered aircraft manufactured worldwide. This proposal would: (1) Modify the requirement for determination of need before a foreign repair station may be considered for U.S. certification, and (2) modify the limitations on the scope of work that a foreign repair station may perform on U.S.-registered aircraft, and engines, propellers, appliances, and component parts for use on U.S.-registered aircraft. In addition, it is proposed that a foreign or domestic manufacturer of a product for which it holds a U.S. type certificate and that is certificated by the FAA as a repair station, be allowed to return to service a component maintained or altered by a noncertificated source subject to specified conditions. Lastly, to be consistent with the air carrier operating rules, the air taxi/commercial operator rules would be amended to permit the airworthiness release to be signed by a person authorized by a U.S.-certificated foreign repair station. This action is part of a general project underway to review and update all Federal Aviation Regulations (FAR) governing repair stations.

DATES: Comments must be received on or before January 25, 1988.

ADDRESSES: Comments on this notice may be mailed, in duplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25454, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 25454. Comments may be examined in Room 915-G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Leo Weston, Aircraft Maintenance Division (AFS-340), Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8203.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. In particular, comments are invited which relate to any potential economic impact and to the impact on international trade that may result if the proposals contained in this notice are adopted. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the above address. All written communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination by interested persons, both before and after the closing date, in the Rules Docket. A report summarizing each substantive contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with their comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25454." The postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a written request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Subpart C, Part 145, of the FAR, Foreign Repair Stations, has its origin in Civil Air Regulation (CAR) Part 52 by an amendment adopted in 1949 as § 52.38 (14 FR 623; February 11, 1949). The purpose of the amendment was to provide for the issuance of foreign repair station certificates for facilities located outside the United States where the Administrator would find that "such agencies are needed for the maintenance, alteration, and repair of United States aircraft operated outside of the United States." Because of the lack of repair agencies authorized to perform work on U.S.-registered aircraft in certain areas outside the United States at that time, considerable inconvenience to aircraft owners, pilots, and operators conducting international flight operations resulted. It was recognized that certification of foreign agencies, even those not staffed with holders of U.S. airman certificates, would expedite the maintenance, repair, and return to service of U.S. aircraft in those areas where certificated repair stations were not available. Consistent with the concept that the maintenance was to be performed on U.S.-registered aircraft in areas outside the United States, the scope of a certificated foreign repair station's authority provided for in § 52.38 was limited to "performance of work on aircraft which are used in operations conducted in whole or in part outside the United States * * *." CAR Part 52 was revised in 1952 (17 FR 2981; April 5, 1952) with § 52.38 becoming § 52.50. When the Civil Air Regulations were recodified in 1962, CAR Part 52 became FAR Part 145, and CAR § 52.50 became §§ 145.71 and 145.73 (27 FR 6662; July 13, 1962).

On July 1, 1986, the FAA prepared two draft internal action notices which were later revised October 3, 1986. The first addressed foreign repair station privileges and responsibilities under Part 145 and the eligibility of replacement parts for return to service on U.S.-registered aircraft. The second addressed air carrier privileges and responsibilities under Parts 121 and 135 when using noncertificated sources for parts. The draft action notices did not represent new FAA policy.

Although it is not regular or required practice for the FAA to solicit comments on internal guidance material, such as action notices, the original notices were broadly circulated to be consistent with the FAA's practice of seeking constructive input and promoting international cooperation. The FAA received comments from 34 different organizations including several foreign civil aviation authorities. Several of the commenters were of the opinion that existing rules and practices required substantive change, and that, to be in accordance with the Administrative Procedure Act, a rulemaking proceeding was appropriate. On October 10, 13, and 14, 1986, a meeting was held in Paris, France, by the FAA and representatives of CAA (United Kingdom), DGAC

(France), LBA (West Germany), and RLD (The Netherlands) to discuss some of the issues covered in the draft action notices. At the meeting, the FAA stated that it would review the regulations pertaining to maintenance and alterations that may be performed by foreign repair stations and original equipment manufacturers.

In addition, the FAA has received petitions from the Air Transport Association of America (Docket No. 25169) and the Regional Airline Association (RAA) (Docket Nos. 25162 and 25163) that request changes to the FAR to clarify the rules and expand the availability of foreign repair stations and foreign aircraft manufacturers for the maintenance and alteration of U.S.-registered aircraft and components, whether or not such aircraft are used wholly or partly outside the United States. In accordance with FAA's procedural rules, summaries of these petitions were published in the **Federal Register** (52 FR 5309; February 20, 1987); (52 FR 8078; March 16, 1987); and (52 FR 8918; March 20, 1987)). The petitions and the public comments received on these petitions have been reviewed and considered by the FAA insofar as the petitions relate to subject matter within the scope of this notice. Such related comments have been considered in the preparation of this notice and are considered a part thereof. Issues in the petitions not covered herein will be acted upon separately.

The environment in civil aviation has changed significantly since the regulations now covered in Subpart C of Part 145 were first adopted in 1949. More foreign-manufactured aircraft are being flown by U.S. operators, and the need for increased maintenance capability for U.S.-registered aircraft from both foreign manufacturers and U.S.-certificated foreign repair stations has dramatically grown in the past 38 years. This is reflected by exemptions that have been granted in recent years related to maintenance and alterations performed by foreign repair stations. Exemptions to §§ 145.71 and 145.73 have authorized U.S.-certificated foreign repair stations to perform work on foreign manufactured products to be used on U.S.-registered aircraft that may not be operated outside the United States. Exemptions from the operating rules have also been issued to air carriers to permit them to use other than U.S.-certificated airmen (foreign manufacturers and foreign U.S.-certificated repair stations) to repair and return to service, under the provisions of the air carrier operating rules, U.S.-registered aircraft and components.

Many of today's U.S. air carriers use foreign-manufactured aircraft and other aeronautical products. This is, in part, a result of multinational consortiums and cooperative agreements to manufacture and market domestic and foreign products between U.S. and foreign manufacturers. In recent years, the type and number of aircraft and aircraft parts manufactured in one or more foreign countries and used by U.S. operators in the United States have grown rapidly. Many U.S. air carriers use foreign-manufactured aircraft and products as the prime elements of their fleets. The RAA indicates in its petition cited above that its member airlines are heavily dependent upon foreign-manufactured aircraft. Almost all aircraft used by RAA members that have passenger capacities exceeding 19 seats are foreign manufactured. Furthermore, of the top 15 passenger-type aircraft in regional service in 1985, 10 were foreign manufactured. These aircraft constituted 60 percent of the total seating capacity of the regional airline industry in 1985. Under current regulatory limitations, foreign manufacturers, with or without an FAA foreign repair station certificate, have been unable in many situations to repair their products, even to the extent that warranty work has been curtailed.

U.S.-certificated foreign repair stations, subject to FAA determination of acceptability and surveillance, meet the same standards as required of U.S.-certificated domestic repair stations under the provisions of Part 145, except as related to the requirements for supervisory and inspection personnel set forth in §§ 145.39 through 145.43. Sections 145.39 through 145.43, as well as §§ 121.378(a) and 135.435(a), require that persons directly in charge of maintenance and inspection of U.S.-registered aircraft have a current U.S. airman certificate. However, both the Civil Aeronautics Act of 1938, as amended (49 U.S.C. 401 et seq. Repealed. Pub. L. 85–726, Title XIV, section 1401(b), Aug. 23, 1958, 72 Stat. 806), and the successor, the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), specifically provide that individuals employed outside the United States in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances may, to the extent the Administrator may provide, be excepted from the requirement to hold an appropriate U.S. airman certificate. This was recognized in the promulgation of the foreign repair station regulations in 1949. Thus, when found properly qualified and certificated by the FAA, a foreign repair station, operating in accordance with FAA requirements and surveillance, can provide proper maintenance and alteration on U.S.-registered aircraft and their components. This capability does not depend on the aircraft's physical location at the time maintenance or alteration is required. Current FAA regulations include geographical restrictions. It now appears appropriate to consider modifications of such restrictions.

Planned Actions

The FAA plans an in-depth review of Part 145 to amend it and related parts of the FAR as appropriate. To the extent possible, the rules will be updated to establish requirements consistent with present and known future industry needs. This planned action recognizes the changing worldwide environment relating to the manufacture of aircraft and related parts and to the maintenance and alteration of those products, as well as the role of repair stations in today's aviation environment. The overall regulatory project will be extensive and cannot be completed in the near term. However, the extent and conditions under which foreign repair stations and aircraft manufacturers may exercise the privileges of an FAA certificated repair station under Part 145 can be updated in a timely manner by a more limited effort.

The expressed need for increased availability of manufacturer and foreign repair station maintenance capability can be met by amending §§ 145.71 and 145.73 and by adding a new paragraph to § 145.47. The immediate concerns expressed in many of the comments on the draft FAA action notices, as well as in the petitions for rulemaking referred to above, would largely be met by the actions proposed herein. In the overall review and amendment planned for Part 145, it is envisaged that other parts will be affected. Amendments to Parts 21, 43, 91, 121, 135, and 187, and possibly other parts of the regulations, may be proposed and covered at that time. However, this rulemaking is limited in scope to Subparts B and C of Part 145 and to a related amendment to Part 135 to make it consistent with Part 121.

Discussion of Proposal

United States operators have expressed a need for expanded access to U.S.-certificated foreign repair stations for maintenance, alteration, and preventive maintenance of their aircraft, engines, propellers, appliances, and component parts because of the increased worldwide demand for

maintenance and the increasing amount of foreign-manufactured equipment being used by U.S. operators. This can be accomplished by the proposed changes to Subpart C, Part 145, that would modify restrictions on who may apply for U.S. certification as a foreign repair station and the limitations on the work that can be performed by such a repair station.

It is anticipated that by modifying these restrictions related to a determination of need and to the scope of work to be conducted by foreign repair stations, a number of noncertificated foreign facilities will apply for FAA certification. This will have some impact on FAA certification and surveillance resources. It is difficult to anticipate the increase in foreign repair stations that might occur if this proposal were adopted. There are now approximately 200 foreign repair stations. However, even with an increase of 50 to 100 percent in the number of foreign repair stations, that is to a total of 300 to 400, the domestic experience indicates that the resource impact should be minimal, and the FAA will respond to the increased workload. The FAA welcomes comments and information that would support more accurate estimates.

In addition, an adjustment of the fees charged for certification and surveillance of foreign repair stations as specified in Part 187, Appendix A, will be considered in a separate rulemaking project. Depending upon the time and resources available, the fee issues may be included in the overall review of Part 145. Other resource requirements will be treated in the normal FAA planning and budget process. The certification and surveillance responsibilities of the FAA for foreign repair stations will make full use of information provided by local airworthiness authorities where appropriate. This will also enhance the capabilities of the FAA inspector work force. In any event, there will be no derogation in safety because of the rule if adopted as proposed.

Notwithstanding the intention proposed herein to increase the availability of repair stations and to broaden the scope of work that can be performed by foreign repair stations, the FAA does not intend that U.S. foreign repair station certificates be used in a manner that does not relate to the support of U.S.-registered aircraft or U.S. operators. Further, it is necessary to retain a provision which requires a showing of need to avoid situations that could develop where certification is requested where no reasonable need could be expected to develop. This provision will ensure that foreign repair stations certificated by the FAA are needed to support U.S.-registered aircraft and would not extend U.S. resources for FAA certification of foreign repair stations that would not support any U.S.-registered aircraft.

This proposal would also provide additional authority for manufacturers to utilize noncertificated facilities under certain circumstances. Under the proposal, a manufacturer of a product for which it holds the type certificate, which is also a certificated repair station, would be permitted to use noncertificated contract sources to accomplish work for which the manufacturer's repair station facility may not be rated and qualified to perform. This authority, which is not contained in the current regulations, would be limited to the maintenance of components that are a part of the manufacturer's U.S. type-certificated product. Under the current regulations, contract maintenance is permitted but is limited in scope. Under the proposal, a noncertificated contractor that performs such maintenance would have to be the original component manufacturer or its licensee and identified in the manufacturer's repair station inspection procedures manual. Airworthiness would be controlled by quality control procedures of the repair station acceptable to the Administrator. Such procedures governing the quality control of the product would be set forth in the repair station's FAA-approved operations specifications and be made a part of the repair station's inspection procedures manual. The detail of such procedures and the level of oversight by the FAA would depend on the individual case.

For example, a foreign engine manufacturer holding a U.S. type certificate for a complete engine and certificated by the United States as a foreign repair station could use contracted noncertificated repair facilities under certain conditions. The engine manufacturer's repair station facility may not be rated and qualified to maintain certain engine components, such as a fuel pump, even though the pump is part of the engine manufactured in accordance with the U.S. type certificate under the manufacturer's quality control system. In this case, the contract work could be performed by the fuel pump manufacturer (or its licensee) even if the pump manufacturer is a non-U.S.-certificated facility, provided that the engine manufacturer (type certificate holder) ensures that the fuel pump is returned to service through a quality control process of the repair station that is acceptable to the Administrator. It should be noted that this approach places the work under the regulatory structure for maintenance rather than manufacturing. However, any similarities between the quality control of manufacturing and the maintenance process may be recognized, if appropriate. In any event, the maintenance work would be subject to the inspection system requirements of § 145.45. The proposed process is consistent with the long-standing distinction in the United States between manufacturing and maintenance.

This proposed new authority for manufacturers is in addition to the limited ratings for manufacturers contained in Subpart D, Part 145. This proposal does not affect Subpart D. Any such modifications are beyond the scope of this notice.

Both §§ 121.378(a) and 135.435(a) of the operating rules provide an exception to the requirement that each person directly in charge of maintenance, preventive maintenance, or alteration hold an appropriate airman certificate if the work is performed by a properly certificated foreign repair station. Although § 121.709(b) regarding the signing of the airworthiness release or aircraft log entry provides for a similar exception permitting such documents to be signed by a person authorized by a foreign repair station, the corresponding provision in § 135.443(b) does not. When Part 135 was revised, prior to the enactment of the Airline Deregulation Act of 1978, the FAA did not consider this necessary because of the minimal use, if any, of foreign-manufactured aircraft by Part 135 operators. However, today, with the expansion of the commuter airline industry after deregulation, and with the wide use of foreign-manufactured aircraft by Part 135 operators, the FAA considers that the exception should apply to operations under Parts 135 and 121. Accordingly, a flush paragraph following § 135.443(b)(3) is being proposed herein to include identical language as now appears in the flush paragraph following § 121.709(b)(3).

Section 145.71

Current regulations require a demonstration of need for maintenance and alteration of U.S.-registered aircraft outside of the United States before the FAA can consider issuing a foreign repair station certificate; these regulations would be modified. As proposed, the rule would provide that the Administrator may issue a foreign repair station certificate when he determines that it will be necessary for

maintaining or altering U.S.-registered aircraft, or engines, propellers, appliances, or component parts thereof for use on U.S.-registered aircraft.

Section 145.73

Section 145.73 would be amended to eliminate the limitation on the scope of work performed by foreign repair stations on U.S.-registered aircraft that are operated wholly or partly outside the United States. This change would permit U.S.-registered aircraft, and engines, propellers, appliances, and component parts for use on U.S.-registered aircraft to be flown or shipped from any location, whether or not in the United States, to a foreign repair station for the purpose of maintenance or alteration, and then shipped to any location, including the United States, for use on a U.S.-registered aircraft, provided the repair station performing the work has a current foreign repair station certificate and is rated and qualified to perform such work. In addition, it is proposed to change the wording in § 145.73 to reflect that the Administrator prescribes operations specifications containing limitations, and that a certificated repair station may perform only the specific services and functions within the ratings and classes that are stated in its operations specifications.

Section 145.47

A new paragraph would be added to § 145.47 to permit a manufacturer holding a U.S. type certificate and a U.S. repair station certificate to have maintenance and alteration work performed on certain components by a noncertificated source, provided: (1) The component is included as part of the type-certificated product, (2) such component maintenance is performed by the original component manufacturer or its licensee, and (3) the component is returned to service through a quality control system of the type certificate holder's repair station acceptable to the FAA. This paragraph would apply equally to domestic and foreign repair stations, because the requirements of § 145.47 for a domestic repair station certificate set forth in Subpart B, Part 145, titled "Domestic Repair Stations" must also be met by a foreign repair station (see § 145.71).

Section 135.443(b)

Under this proposal, § 135.443(b) would be amended to permit the airworthiness release to be signed by a person authorized by a foreign repair station. This proposal would add a flush paragraph following § 135.443(b)(3) identical to the flush paragraph in § 121.709(b) that follows § 121.709(b)(3).

Paperwork Reduction Act

Information collection requirements in the proposed amendment to § 135.443 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0039.

Regulatory Evaluation

The airline industry has experienced rapid growth following deregulation resulting in a demand for equipment suitable to the individual operator's requirements. This demand has been increasingly met through international endeavors in the manufacture of aircraft and their components. The demand for qualified maintenance services and facilities has grown as well, and as the fleet of foreign-manufactured aircraft has increased, particularly in the regional and commuter airline industry, it has become necessary to utilize foreign maintenance sources more extensively than in the past. Further, numerous operators of U.S.-manufactured aircraft have expressed their dissatisfaction with the geographic restrictions on the use of foreign repair stations. They state that the current rules place unnecessary limitations on their use of valuable alternative maintenance sources.

The proposed regulatory changes are expected to increase competition in the marketplace and yield benefits by providing U.S. operators with the option of choosing alternative sources of maintenance that are not accessible under the existing rules. This increase in the availability of maintenance sources would be accomplished without diminishing aviation safety. It is anticipated that consumers could also benefit, because the availability of alternative sources of maintenance could result in lower air carrier operating costs that could be passed on to consumers in the form of lower air transportation fares.

Many U.S. operators have not invested the capital required to provide domestic maintenance facilities that are capable of servicing foreign-manufactured aircraft, nor have they been able to attract outside capital sources to provide the necessary investment. Under the existing regulations, some carriers that operate foreign-manufactured aircraft have obtained exemptions to take advantage of the manufacturer's warranty provisions for the products they operate. Presently, some manufacturers are precluded from repairing their own products, because of their repair station's location or their inability to obtain U.S. certification under §§ 145.71 and 145.73.

While the FAA has granted exemptions to U.S. air carriers to permit them to use foreign repair facilities that would not be otherwise available under current regulations, that mechanism does not provide a solution to all of the problems brought about by the increasingly international character of U.S. air carrier operations. Also, in light of the lengthy negotiation process associated with formulating and refining bilateral agreements, pursuing additional bilateral agreements for maintenance of U.S.-registered aircraft is not considered advantageous in terms of any short-term benefits for the U.S. aviation community. The FAA, however, will continue to pursue the long-term use of bilateral agreements wherever appropriate.

The proposed amendments will be beneficial to U.S. operators of U.S.-manufactured and foreign-manufactured aircraft alike. For those carriers that have petitioned to use foreign facilities to maintain their aircraft, easing the restrictions on foreign repair station work would relieve operators of the burden associated with the exemption process. It should also be noted that there are no direct compliance costs to U.S. interests associated with the proposed revisions, because certification as a repair station is strictly voluntary. However, foreign repair stations are subject to a fee for certification by the FAA.

Although expanding the access to world markets for aircraft maintenance may ultimately result in additional work being done at foreign locations, the FAA does not consider that the consequences would include an immediate shift of jobs from the United States to foreign countries. In fact, a period of adjustment is anticipated during which a transition to the new rules will be accomplished, resulting in a gradual implementation process to occur over several years. During that transition, the demand for maintenance services will continue to grow in the United States and at foreign locations. The effects of the proposals on the increase in foreign maintenance and on the existing work performed in the United States must be considered in the context of an expected overall growth in the industry.

The FAA has determined that allowing domestic and foreign manufacturers holding U.S. repair station certificates to contract the repair of components to non-U.S.-certificated

repair stations, domestic and foreign, under the specific circumstances set forth in the proposed § 145.47(c) will not diminish the quality of the repairs, as the components would be approved for return to service under the repair station's quality control process that has been found acceptable to the FAA. Although this proposal would place such repairs under the regulatory structure for maintenance rather than manufacturing, it is not expected to influence significantly the current volume of repair work conducted by manufacturers that meet the requirements. This conclusion is based on the recognition that: (1) Domestic repair facilities to which such repair work would be contracted are generally already certificated, and (2) a number of manufacturers certificated as FAA foreign repair stations and other FAA-certificated foreign repair stations already perform repairs for domestic operators under exemptions granted to those operators.

The proposed amendment to § 135.443(b) which would permit a foreign repair station to return an aircraft or part to service after performance of maintenance, similar to existing § 121.709(b), should not result in any adverse impact. Because the implementation of § 121.709(b) has not created any problems, none are anticipated from the proposed change to Part 135. Further, being able to use a foreign repair station to return their aircraft to service would be a major benefit for Part 135 operators.

Commenters are encouraged to respond to these assessments, address proposed specific changes, and submit supportive economic and trade data for any beneficial or adverse impacts that are anticipated to occur should the proposed rules be adopted. In this regard, U.S. operators are encouraged to submit estimates of their current and projected expenditures for maintenance performed by foreign sources. In addition, the FAA solicits recommendations for better methods of achieving the objectives of the rules and rule changes proposed in this notice.

International Trade Impact Analysis

The proposed rule changes will be consistent with the terms of several trade agreements to which the United States is a signatory, such as the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), incorporating the Agreement on Trade in Civil Aircraft (31 U.S.T. 619), and the Agreement on Technical Barriers to Trade (Standards) (19 U.S.C. 2531). Not only do the proposed changes reflect the FAA's desire to eliminate unnecessary barriers to international trade, but such action is consistent with section 1102(a) of the Federal Aviation Act of 1958, as amended, which requires the FAA to exercise and perform its powers and duties consistently with any obligation assumed by the United States in any agreement that may be in force between the United States and any foreign country or countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant impact on a substantial number of small entities."

The FAA has determined that the proposals are not expected to have a significant impact on a substantial number of small entities. The provisions of this Notice are primarily directed towards the activities of foreign repair stations and, therefore, domestic repair stations are not expected to incur any compliance costs. Consequently, the domestic repair stations should not incur any significant economic impact under FAA Order 2100.14A, September 16, 1986, Regulatory Flexibility Criteria and Guidance. Furthermore, by deleting barriers in the aviation repair station industry and encouraging potential entrepreneurs to introduce beneficial products and processes to the aviation industry as a whole, the proposals are consistent with the Act (See RFA Sec. 2(a)(5)).

Since the FAA has determined that the proposals are not expected to have a significant impact on a substantial number of small entities, it has tentatively been concluded that a regulatory flexibility analysis is not required. Commenters are encouraged to address this tentative conclusion. The FAA particularly solicits the views of small domestic repair stations (those repair stations having fewer than 200 employees) as to the estimated effect, if any, of the proposal on their individual business. If the comments do not agree with the FAA assessment and a regulatory analysis is justified, such an analysis will be prepared prior to any adoption of the proposed rule and made a part of this docket.

Conclusion

For the reasons discussed in the preamble and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291, and that this rule 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. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, is printed in its entirety in the preamble of this notice and it has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

14 CFR Part 135

Air carriers, Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 145

Aircraft, Airworthiness, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 135 and 145 of the Federal Aviation Regulations (14 CFR Parts 135 and 145) as follows:

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421–1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 135.443(b) by adding a flush paragraph following § 135.443(b)(3) to read as follows:

§ 135.443 Airworthiness release or aircraft maintenance log entry.

* * * * *

(b) * * *

(3) * * *

Notwithstanding paragraph (b)(3) of this section, after maintenance, preventive maintenance, or alterations performed by a repair station certificated under the provisions of Subpart C of Part 145, the airworthiness release or log entry required by paragraph (a) of this section may be signed by a person authorized by that repair station.

* * * * *

PART 145—REPAIR STATIONS

3. The authority citation for Part 145 continues to read as follows:

Authority: Secs. 313, 314, 601, and 607, 72 Stat. 752; 49 U.S.C. 1354(a), 1355, 1421, and 1427, unless otherwise noted.

4. By amending § 145.47 by redesignating paragraph (c) as (d) and adding a new paragraph (c) to read as follows:

§ 145.47 Equipment and materials: Ratings other than limited ratings.

* * * * *

(c) A certificated domestic or foreign repair station may contract maintenance and alteration of components to a noncertificated source identified in the repair station's inspection procedures manual, provided:

(1) The repair station is a manufacturer of a product for which it holds a U.S. type certificate;

(2) The contracted component is included as part of the type-certificated product;

(3) The component maintenance is done by the original component manufacturer or its licensee;

(4) Before the repair station approves the component for return to service, the repair station ensures that it has gone through its quality control system that is approved by the Administrator as set forth in the repair station's inspection procedures manual.

* * * * *

5. By revising § 145.71 to read as follows:

§ 145.71 General requirements.

A repair station certificate with appropriate ratings may be issued for a foreign repair station if the Administrator determines that it will be necessary for maintaining or altering United States registered aircraft, and engines, propellers, appliances, and component parts thereof for use on United States registered aircraft. A foreign repair station must meet the requirements for a domestic repair station certificate, except those in §§ 145.39 through 145.43.

6. By revising § 145.73 to read as follows:

§ 145.73 Scope of work authorized.

(a) A certificated foreign repair station may, with respect to United States registered aircraft, maintain or alter aircraft, airframes, powerplants, propellers, or component parts thereof. The Administrator may prescribe operations specifications containing limitations that he determines necessary to comply with the airworthiness requirements of this chapter.

(b) A certificated foreign repair station may perform only the specific services and functions within the ratings and classes that are stated in its operations specifications.

Issued in Washington, DC, on November 18, 1987.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 87-26950 Filed 11-19-87; 11:15 am]

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federal register

Tuesday
November 24. 1987

Part IV

Environmental Protection Agency

40 CFR Parts 52 and 81

State Implementation Plans for Visibility Long-term Strategies, Integral Vistas, and Control Strategies; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AD-FRL-3282-3]

State Implementation Plans for Visibility Long-Term Strategies, Integral Vistas, and Control Strategies

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is disapproving the State implementation plans (SIP's) of 29 States for failing to comply with the provisions in EPA's existing regulations for visibility protection in mandatory Class I Federal areas dealing with impairment which can be reasonably attributed to a source. The EPA is incorporating Federal plans into the SIP's of these States to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and 51.306. The EPA is also codifying the integral vistas for the Roosevelt Campobello International Park into 40 CFR 81.437 and revising its visibility new source review program for the State of Maine to provide for the protection of integral vistas in that State. Today's actions were proposed on March 12, 1987, at 52 FR 7802 and are in accordance with a settlement agreement with the Environmental Defense Fund (EDF) and the National Parks and Conservation Association (NPCA).

EFFECTIVE DATE: This action will be effective on December 24, 1987.

ADDRESSES: The EPA has established a docket for this rulemaking, Docket Number A–85–26, in accordance with section 307(d) of the Clean Air Act (Act), 42 U.S.C. 7607(d). Materials related to the development of this rulemaking have been placed in this docket. The docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m. Monday through Friday at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: David Stonefield, Chief, Plans and Policy Section, Standards Implementation Branch (MD–15), Control Programs Development Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone (919) 541–5350 or FTS 629–5350).

SUPPLEMENTARY INFORMATION:

Background

A. Regulatory Requirements and Litigation Challenges

Section 169A of the Act, 42 U.S.C. 7491, sets as a national goal "* * * the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution." Mandatory Class I Federal areas are certain national parks, wildernesses, and international parks as described in section 162(a) of the Act, 42 U.S.C. 7472(a). Section 169A requires reasonable progress toward meeting the national goal for mandatory Class I Federal areas where EPA has determined that visibility is an important value. On November 30, 1979, EPA identified 156 of these areas where visibility is an important air quality related value (see 44 FR 69122). Section 169A specifically requires EPA to promulgate regulations requiring certain States to amend their SIP's to provide reasonable progress toward meeting the national goal for these 156 areas.

On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 *et seq.* In broad outline, the visibility regulations require 36 States listed in § 51.300(b) to (1) coordinate SIP development with the appropriate Federal land managers (FLM's), (2) develop a program to assess and remedy visibility impairment from new and existing sources, (3) develop a long-term (10 to 15 years) strategy to assure reasonable progress toward the national goal, (4) develop a visibility monitoring strategy to collect information on visibility conditions, and (5) consider in all aspects of visibility protection any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area) identified by the end of 1985 by the FLM's as critical to the visitor's enjoyment of the Class I areas.

These regulations only address a type of visibility impairment which can be traced to a single source or small group of sources known as reasonably attributable impairment or "plume blight." The EPA deferred action on the regulation of widespread homogeneous haze (referred to as regional haze) and urban plumes due to scientific and technical limitations in visibility monitoring techniques and modeling methods (see 45 FR 80085 col. 3). The regulations required the States to submit revised SIP's satisfying those provisions to EPA by September 2, 1981 (see 45 FR 80091, codified at 40 CFR 51.302(a)(1)).

In December 1982, environmental groups, including EDF and NPCA, filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility SIP's for the 35 States [1] that had failed to submit SIP's to EPA (*EDF* v. *Thomas*, Number C826850 RPA).

The EPA and the plaintiffs negotiated a settlement agreement for the remaining States which the Court approved by order on April 20, 1984. For more information on details of the provisions of the settlement, including a schedule of actions by EPA, see EPA's announcement of the agreement at 49 FR 20647 (May 16, 1984).

B. Settlement Agreement

The settlement agreement required EPA to promulgate Federal visibility SIP's, henceforth called Federal implementation plans (FIP's), on a specified schedule for those States that had not submitted visibility SIP revisions to EPA. Specifically, the first part of the agreement required EPA to propose and promulgate FIP's which cover the monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307. The EPA proposed such plan revisions for 34 States on October 23, 1984, at 49 FR 42670. The EPA promulgated its monitoring strategy for 23 States and its NSR provisions for 21 States (see 50 FR 28544, 51 FR 5504, and 51 FR 22937). In separate notices, EPA approved the SIP's of the other States with respect to monitoring and NSR.

The second part of the settlement agreement required EPA to determine the adequacy of the SIP's to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (§ 51.302), integral vista protection (§ 51.302–307), and long-term strategies (§ 51.306). The settlement agreement required EPA to propose and promulgate FIP's to remedy any deficiencies on a specified schedule.

On January 23, 1986, at 51 FR 3046, EPA preliminarily determined the SIP's of 32 States were deficient with respect to the remaining visibility provisions.

The EPA and the plaintiffs negotiated revisions to the settlement agreement which extended the deadlines for proposing FIP's to remedy the deficiencies. The court approved these

[1] The State of Alaska had submitted a SIP which was approved on July 5, 1983, at 48 FR 30623.

revisions by its order of September 9, 1986. A copy of the settlement agreement and revisions is available in Docket A–85–26 at the address given at the beginning of this notice.

Under the revised agreement, EPA must propose and promulgate FIP's to address the deficiencies relating to the general plan requirements and long-term strategies and can defer proposing and promulgating FIP's to remedy deficiencies related to impairment which the FLM's have certified to EPA. The agreement allows EPA until August 31, 1988, to propose remedies for existing impairment.

On March 12, 1987, at 52 FR 7802, EPA proposed to disapprove the SIP's of 32 States for failing to meet the general plan and long-term strategy requirements of 40 CFR 51.302 and 51.306. The EPA proposed that control strategies to remedy existing impairment were unnecessary in the SIP's for 28 States and deferred a decision on the necessity of best available retrofit technology (BART) in four States (Arizona, Maine, Minnesota, and Utah).

The EPA also proposed to disapprove the State of Maine's SIP for failing to meet the integral vista provisions of 40 CFR 51.302–51.307 and proposed revisions to the Federal visibility NSR review program to be applicable in that State.

The States were given the opportunity to avoid today's promulgation if they submitted SIP revisions to EPA by August 31, 1987. Three States (Georgia, Florida, and Kentucky) met this deadline. The EPA is currently reviewing the submittals and will take appropriate action on them according to its usual procedures and the provisions of the revised settlement agreement. Several States—Arkansas, Louisiana, and Texas—have submitted draft or final SIP's after the August 31 date. The settlement agreement requires EPA to promulgate FIP's for States which fail to meet the submittal deadline, and therefore EPA is promulgating FIP's for these States today. The EPA will continue to accept and review these and any other visibility SIP revisions. If EPA approves any such revisions, that action will supersede today's action.

C. Today's Action

Today's action disapproves the existing SIP's of 29 States and incorporates Federal plans into the SIP's. These States are:

Alabama
Arkansas
Arizona
California
Colorado
Hawaii
Idaho
Louisiana
Maine
Michigan
Minnesota
Missouri
Montana
Nevada
New Hampshire
New Jersey
New Mexico
North Carolina
North Dakota
Oklahoma
South Carolina
South Dakota
Tennessee
Texas
Utah
Virginia
Virgin Islands
West Virginia
Wyoming

Seventeen comments were received which directly address the issues in the proposal. The following is a discussion of the major elements of the Federal plans, issues raised by commenters, and EPA's response. The requirements and procedures for developing visibility protection plans were described in detail in the March 12 proposal (52 FR 7802) and will not be restated here.

Assessment of Visibility Impairments

A. Federal Remedies for Remedying Existing Impairments

1. BART Unnecessary in 28 States

The EPA solicited information from the FLM's on existing visibility impairments according to the coordination requirements of the visibility regulations (§ 51.302(b)). The responses to EPA's request (summarized both in the January 23 notice of deficiency (51 FR 3047) and the March 12 proposal (52 FR 7802)) were used to determine the list of States in which to incorporate Federal control strategies or emission limits representing BART.

In its response, the Department of the Interior certified the existence of uniform haze in all Class I areas in the lower 48 States. However, the information provided is inadequate to enable EPA to determine that this impairment could be traced to any specific source and thus addressable under the existing visibility regulations. Therefore, EPA proposed that BART or other control strategies were not necessary in the FIP's for 28 States. This includes the three States that later submitted SIP's. The responses from the FLM's also indicated that for ten Class I areas in seven States, visibility impairment existed which may be attributed to specific sources. The circumstances in these Class I areas and States were discussed in detail in the proposal and are addressed individually below.

a. Comments. A commenter supported EPA's determination that BART or other control strategies were unnecessary in the SIP's of 28 States. No comments were received which disputed EPA's findings here for the 28 States.

b. EPA Response. The EPA is affirming its decision that BART or other control strategies are unnecessary in the FIP's for 28 States' SIP's at this time.

2. Tuxedni Wilderness, Alaska

The FLM for Tuxedni Wilderness noted the existence of visibility impairment which the field staff believes may be traceable to four specific sources. The State of Alaska has a fully approved visibility SIP which requires the State to address any certifications of impairments in the periodic review of the SIP. Thus, Alaska must address this impairment in its next review and there is no need for EPA to address this impairment in this Federal rulemaking.

a. Comments. One commenter contended that the FLM had incorrectly identified the sources of the visibility impairment. This commenter asserted that a more detailed emissions inventory would reveal a large number of stationary and area sources which could be contributing to the impairment.

b. EPA Response. The EPA is allowing the State to conduct a review of this impairment under its own procedures and to develop a detailed inventory as a first step in addressing this impairment. The commenter should communicate its views to the appropriate Alaskan agencies. In the meantime there is no need to address this impairment in a Federal rulemaking at this time.

3. Brigantine Wilderness, New Jersey

The FLM for Brigantine Wilderness identified impairment which may be traced to a specific source. In addition to the source suspected by the FLM to be causing the impairment, EPA noted the existence of a large number of major and minor stationary sources and several urban areas near this Class I area. The EPA proposed that BART or other control strategies were unnecessary in the FIP for New Jersey at this time because of this fact and because the plume from the source suspected by the FLM had not been documented within the wilderness area.

a. Comments. One commenter concurred with EPA's determination that BART was unnecessary at this time because of the lack of sufficient documentation. No other comments were received.

b. EPA Response. The EPA is affirming its decision that BART or any other control strategy is not necessary in the FIP for New Jersey at this time.

4. Cape Romain Wilderness, South Carolina

The FLM for Cape Romain Wilderness certified the existence of visibility impairment and stated that several specific sources may be producing the impairment. The EPA noted the existence of a large number of major

and minor stationary sources and two urban areas near this Class I area. The EPA proposed that BART or other control strategies were unnecessary in the FIP for South Carolina because of the large number of urban, major, and minor stationary sources near the wilderness.

a. Comments. The State of South Carolina and other commenters supported EPA's decision not to require a control strategy in that State. One commenter requested an explanation of the attainment and compliance status of sources near the Class I area.

b. EPA Response. The EPA is affirming its decision that BART or other control strategies are not necessary in the FIP for South Carolina at this time. The attainment and compliance status of major sources near the wilderness are discussed in comments from the State of South Carolina and a survey conducted by EPA's Regional Office staff. These materials are available through Docket A–85–26, Items 11–B–16 and IV–D–2, at the address given above.

5. EPA Defers Action On Impairments

The FLM's certified the existence of visibility impairment in seven Class I areas in four States which EPA believes may be attributable, in part, to certain local sources. These Class I areas are:

Grand Canyon National Park Arizona
Petrified Forest National Park, Arizona
Saguaro Wilderness, Arizona
Moosehorn Wilderness, Maine
Roosevelt Campobello International Park, New Brunswick, Canada
Voyageurs National Park, Minnesota
Canyonlands National Park, Utah

Because neither the FLM's nor EPA had sufficient documentation or technical support to positively identify any specific source or to complete a BART analysis in time for this rulemaking, EPA proposed to defer a decision regarding the necessity for BART or other control strategy in the FIP's for these States.

a. Comments. Commenters uniformly supported EPA's deferral regarding control strategies in these four States. One commenter noted that the Federal plans would not be complete until EPA took action on the impairments in these States. Several commenters questioned the appropriateness of the EPA/FLM monitoring efforts in Petrified Forest National Park, Grand Canyon National Park, and Moosehorn Wilderness. The State of Minnesota submitted a modeling screening analysis that indicated that the emissions from the nearest source to Voyageurs National Park could not be impairing visibility within the park. One commenter noted that the proposal was consistent with statements in the 1980 visibility rulemaking that few, if any, existing stationary sources would be subject to BART analyses (see 45 FR 80088 col.3).

b. EPA Response. The commenter is correct in that the FIP's are not complete until EPA takes action on the impairments in the four States.

The EPA will defer a decision regarding the necessity of BART or other control strategies in the FIP's for these four States—Arizona, Minnesota, Maine, and Utah. The EPA will respond to the appropriateness of its technical efforts to attribute impairment to specific sources and on the analyses submitted by commenters when it takes action on the necessity of control strategies. The EPA intends to propose a decision regarding BART in these four States no later than August 31, 1988, as permitted under the revised settlement agreement.

Long-Term Strategy

A. SIP Disapproval

The EPA, in today's action, is disapproving the SIP's of the following 29 States for failing to incorporate the visibility long-term strategy requirements of 40 CFR 51.306 into their SIP's and is incorporating § 52.29 into the SIP's for these States:

Alabama
Arkansas
Arizona
California
Colorado
Hawaii
Idaho
Louisiana
Maine
Michigan
Minnesota
Missouri
Montana
Nevada
New Hampshire
New Jersey
New Mexico
North Carolina
North Dakota
Oklahoma
South Carolina
South Dakota
Tennessee
Texas
Utah
Virginia
Virgin Islands
West Virginia
Wyoming

1. Comments

The State of South Carolina commented that it believed its existing visibility SIP, submitted and approved in response to the first part of the visibility settlement, was adequate to address the long-term strategy requirements.

2. EPA Response

In its action on South Carolina's visibility SIP (51 FR 2698, January 21, 1986), EPA noted that South Carolina had some of the provisions required by § 51.306 under the first part of the settlement agreement. The EPA further stated that these revisions may not meet all the requirements of § 51.300 *et seq.*, but they did not conflict with them. South Carolina's SIP may need to be revised later to incorporate all the requirements of §§ 51.302, 51.304, and 51.306. As part of the development of EPA's notice of deficiency, EPA's Regional Office reviewed South Carolina's SIP and noted several deficiencies in the long-term strategy. This information is available in Docket A–85–26 and was used to determine the deficient SIP's in both the January 23, 1986, notice of deficiency and the March 12, 1987, proposal. The EPA again notified the State in a letter dated July 27, 1987, that its visibility SIP did not meet all the requirements of § 51.306 (see docket A–85–26).

In today's action, EPA is affirming its decision to disapprove South Carolina's SIP for failing to incorporate adequate provisions to meet the long-term strategy requirements of § 51.306.

B. Federal Remedies

The long-term strategy of § 51.306 of the visibility regulations is a 10- to 15-year plan for making reasonable progress toward the national goal. Section 51.306 requires each State to (1) develop a long-term strategy, (2) review its strategy no less frequently than every 3 years, (3) report to EPA and the public on progress achieved toward the national goal, and (4) consider adopting control strategies to remedy impairment from sources not covered by the BART requirements. As discussed in the proposal, EPA's visibility regulations address impairment that can be traced to specific sources and EPA is deferring action on such existing impairment. Thus, the Federal long-term strategy promulgated today is limited to the prevention of future impairment and the establishment of a framework to address any additional existing impairment that may be certified in the future. The March 12 proposal contained several narrative sections intended to meet the long-term strategy requirements. Those sections, which are adopted today, and relevant comments are discussed below.

1. Periodic Review

The EPA proposed a new § 52.29 to be incorporated into the SIP's of the deficient States. This new section commits the Administrator to periodic reviews of the long-term strategy and reporting required by § 51.306(c).

a. Comments. Commenters supported EPA's approach for meeting this requirement. One commenter stated that EPA should rewrite the 1980 regulations into the SIP's of the deficient States and that the action proposed by EPA was reasonable.

b. EPA Response. The EPA is promulgating a new § 52.29, as proposed, and incorporating it into the SIP's of the States listed above. This

section incorporates the requirements of § 51.306(c) into the SIP's of the States listed above.

2. Smoke Management Practices

Section 51.306(e) requires the States to consider six factors including smoke management techniques in the development of their long-term strategies. As noted in the March 12, 1987, proposal, the FLM's did not specifically identify smoke from prescribed fires as a cause of impairment in the mandatory Class I areas. However, EPA recognized that smoke from prescription burning and wildfires can impair visibility in mandatory Class I areas, but also recognized that many State, local, and Federal agencies are responsible for the management of burning activities. The EPA proposed that, before it can develop a Federal smoke management program to be incorporated into SIP's, it must gain an understanding of the extent of these problems and coordinate the development of a control program with the appropriate agencies.

a. Comments. Several commenters expressed concern that EPA may oversimplify the "prescription burning issue." One commenter stated that a careful and thorough balancing of land management and air quality goals must be made and advised EPA to work closely with the land managing agencies before proceeding with a regulatory program.

b. EPA Response. As discussed in the proposal, the FLM's have not identified smoke from prescribed fires as a cause of existing visibility impairment. Thus, although EPA believes it may be a significant cause of impairment in certain Class I areas, EPA is not including smoke management techniques in today's Federal program or for the SIP's of deficient States. In addition, as stated above, EPA is aware of the complexities associated with the balancing of land management and air quality goals. Thus, EPA is working with other Federal agencies to study possible smoke management programs.

3. Ongoing Air Pollution Control Programs

The EPA proposed that its ongoing efforts to implement the visibility NSR and prevention of significant deterioration programs meet the long-term strategy requirements for preventing future impairments from major stationary sources or major modifications.

a. Comments. One commenter noted that although EPA intends to address regional haze impairments by promulgating regulations in the future, it is not premature to begin addressing this issue in the long-term strategy of the existing regulations. Furthermore, the commenter contended that advances in science warrant reexamining the feasibility of addressing regional haze impairment in the context of today's long-term strategy.

b. EPA Response. The purpose of today's rulemaking is only to implement the existing requirements for visibility protection. The EPA limited the 1980 visibility regulations to plume blight type impairments. The EPA believes that under section 169A of the Act, it must propose and promulgate regulations at the national level to address regional haze impairments before it can require such programs in the SIP's. In addition, the EPA believes the technical tools to address regional haze impairments are not fully available. (See related actions at 51 FR 43389 on December 2, 1986, and 52 FR 26973 on July 17, 1987.) For this reason, EPA does not intend to promulgate into the long-term strategy for deficient SIP's requirements or control programs which would address regional haze impairments. However, EPA is actively addressing regional haze impairment issues in other contexts. An advance notice of proposed rulemaking was published on July 1, 1987 (see 52 FR 24670), which solicited comment regarding the development of a secondary (welfare-based) national ambient air quality standard for fine particles (those particles with an aerodynamic diameter equal to or less than 2.5 micrometers). The principal welfare effect that would be addressed by such a standard is impairment of visibility. At this time, EPA is reviewing public comments submitted in response to that notice. In addition, EPA has recently formed a new Visibility Research Subcommittee (VRS) under the Clean Air Scientific Advisory Committee program. The charge of the VRS will include a review of the state of technical knowledge on visibility impairment. The review will encompass research work performed by the entire scientific community, both public and private, and will not be limited to EPA activities. The comments and reports of the VRS will be considered in the development of the scientific and technical basis for any regulatory programs to address regional haze impairment.

The EPA is also engaged in several research activities that directly relate to visibility impairment, including regional haze. These activities include monitoring programs as well as laboratory research and analysis. A brief description of these activities follows:

Monitoring Activities

(1) The Subregional Cooperative Electric Utility, Department of Defense, National Park Service, Environrental Protection Agency, Study on Visibility (SCENES) is a western visibility impairment characterization effort. It is run by a consortium of Federal agencies and industry. The EPA coordinates with the steering committee on this monitoring/analysis effort.

(2) The Research on Operations Limiting Visual Extinction (RESOLVE) is a special study coordinated with SCENES. RESOLVE is a joint effort between EPA's Environmental Monitoring Support Laboratory (EMSL)-Las Vegas, and the Department of Defense. The study implemented a monitoring program for the California Mohave Desert in 1983–85. The final report on impairment is due by February 1988. New technologies have been developed in RESOLVE for monitoring and source apportionment techniques. This work may lead to better techniques for addressing Western regional haze impairment problems.

(3) Interagency Monitoring of Protected Visual Environments (IMPROVE) is an ongoing interagency monitoring effort to meet the requirements of the visibility FIP's. The IMPROVE program measures visibility impairment in certain Class I areas for both plume blight and regional haze. The U.S. National Park Service (NPS) Air Quality Office had a monitoring system in a number of its Class I areas. The IMPROVE program incorporates most of the sites established and operated by the NPS. In addition, the IMPROVE program uses EPA funding to expand the monitoring. In the future, as more States adopt SIP's and take over monitoring authority, they either will continue funding of the NPS monitoring or must make other arrangements for visibility monitoring.

(4) The Eastern Fine Particle Visibility Research Monitoring Network (EFPVN) is an effort to refine visibility and fine particle relationships and determine trends of visibility indicators in different regions in the East. Most sites are co-located with those established by the Dry Deposition Network to utilize some of their meteorological data. The study will collect 24-hour data on fine particle mass, sulfate, nitrate, trace elements, total carbon, and elemental carbon, in addition to light extinction by scattering and visual range by contrast. A pilot EFPVN station is in operation and at least three of a planned nine stations will be deployed by the end of this calendar year.

(5) The EPA's Atmospheric Sciences Research Laboratory (ASRL) has planned a detailed characterization of aerosol at several monitoring sites to establish aerosol-visibility relationships and to determine aerosol sources. This study will include measurements of size distribution of various aerosols components, composition of the organic aerosol, impact of sampling artifacts, and effects of relative humidity and temperature changes. In addition, the study will include 1-hour measurements of the above parameters for correlation with instantaneous visibility measurements. This study will use some of the same sites as the EFPVN.

6. The EPA is developing performance specifications for visibility monitoring (visual range and particulate loading). This work will lead to a uniform reference methodology for comparing all visibility monitoring studies.

Laboratory Research and Analysis Work

(1) The ASRL is adding visibility aspects of a regional transport model to the acid rain transport research. This work should result in a personal computer model for predicting regional visibility impacts that can be readily utilized by States.

(2) The ASRL is planning to conduct several minor studies on aerosols to determine the importance of organics, relative humidity, and the relationship of sulfates and nitrates on visibility impairment characteristics.

(3) The ASRL is continuing to review and analyze relationships between visibility trends and emission trends. Work will shift emphasis from the National Weather Service (NWS), human observer visibility data set, to data from EPA and NPS monitoring networks and the upcoming NWS automated visibility network. The EMSL-Las Vegas, will continue interpretive analysis of RESOLVE and IMPROVE data. This work will incorporate EFPVN data when available.

(4) The EMSL-Las Vegas, will be developing studies for visibility perception and value of visibility for urban areas to complement the work already done for rural/scenic vista areas.

All of these activities will contribute to EPA's continuing effort to develop the knowledge on the causes and mechanisms of regional haze impairment and transport. This knowledge is necessary to develop regulatory control programs.

4. Future Certification of Impairments

The EPA noted in the March 12 proposal (52 FR 7808) that the visibility regulations allow the FLM's to certify the existence of visibility impairment at any time. Any certifications of impairment made to a State, or to EPA in lieu of a State, would then be addressed in the periodic review of the visibility SIP or FIP.

a. Comments. Several commenters called for EPA to propose for public review a set of criteria for the FLM's to use in making certifications of impairment. The commenters contend that general observations of impairments are inadequate for use in a regulatory format.

b. EPA Response. The visibility regulations do not specify methods by which the FLM's are to make certifications of visibility impairments, and given that the purpose of today's rulemaking is only to implement the existing requirements, EPA is not proposing criteria for certifications of impairment as part of this rulemaking. However, as discussed in the proposal, EPA recognizes the difficulties associated with developing control strategies based on general information. Thus, in the proposal (52 FR 7804) EPA provided guidance to the FLM's regarding the need to provide more specific documentation of visibility conditions when making future certifications under § 51.302(c)(1).

Integral Vistas

A. Federal Remedies

An integral vista is defined as "a view perceived from within a Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area." The only FLM to identify integral vistas was the Roosevelt Campobello International Park Commission for its one Class I area (see 46 FR 22707).[2] Therefore, EPA proposed to disapprove only the State of Maine's SIP for failing to provide for the protection of these vistas. The EPA proposed to incorporate the vistas into the 40 CFR Part 81 which lists Roosevelt Campobello International Park as a mandatory Class I area where visibility is an important value, and to revise its Federal NSR program (§ 52.27) to provide for the review of major new sources or major modifications which may affect visibility in the integral vistas. The EPA proposed to defer action on the necessity of a control strategy to remedy existing impairment in the integral vistas within Maine until no later than August 31, 1988.

1. Comments

Commenters generally supported EPA's decision to protect only the integral vistas in Maine. One commenter noted that EPA should make clear that there is no Federal requirement for integral-vista protection in any State other than Maine. One commenter stated the references to integral vistas in new § 52.29 which are to be applicable in all deficient SIP's should be deleted because this provision only applies in Maine.

2. EPA Response

The commenter is correct that the only Federal requirement for integral vista protection is for the vistas associated with the Roosevelt Campobello International Park. The EPA does not believe that references to integral vistas in new § 52.29 are misleading and confusing. The EPA believes the provisions promulgated today correctly apply to the State of Maine's SIP. The EPA is affirming its decision to disapprove the State of Maine's SIP for failing to provide for the protection of the integral vistas for the Roosevelt Campobello International Park and is incorporating revised § 52.27 into Maine's SIP.

Summary

In today's action, the EPA is disapproving the SIP's of 29 States for failing to revise their SIP's to comply with the provisions of 40 CFR 51.302 and 51.306.

The EPA is affirming its decision that control strategies are not necessary in the SIP's for 28 States to remedy existing impairments because visibility impairment in those States cannot be reasonably attributed to any specific sources. The EPA is promulgating a uniform program to be applicable in 29 States to meet the periodic review requirements of 40 CFR 51.306(c).

The EPA is also:

(1) Codifying the integral vistas which have been identified for the Roosevelt Campobello International Park into the 40 CFR Part 81 listing for that Class I area,

(2) Disapproving the SIP for the State of Maine for failing to provide for the protection of the integral vistas which extend into Maine, and

(3) Revising the Federal visibility NSR program for the State of Maine to provide for the protection of these vistas from the impact from new or modified

[2] Although the regulations allow the FLM's to identify integral vistas pursuant to 40 CFR 51.304, the States may also identify and protect vistas under their own authority (see 49 FR 80095 col. 1).

major stationary sources in the State of Maine.

Classification

The Administrator certifies pursuant to the provisions of 5 U.S.C. 605(b) that the attached rule will not have a significant economic impact on a substantial number of small entities.

The rules promulgated today do not contain any information collection requirements subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980, U.S.C. 3501 et seq.

The rules have been submitted to OMB for review under Executive Order 12291. Any comments from that office have been placed in Docket A–85–26. These rules are not major within the meaning of Executive Order 12291.

List of Subjects in 40 CFR Parts 52 and 81

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

Date: November 10, 1987.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.29 is added to Subpart A to read as follows:

§ 52.29 Visibility long-term strategies

(a) *Plan Disapprovals.* The provisions of this section are applicable to any State implementation plan which has been disapproved for not meeting the requirements of 40 CFR 51.306 regarding the development, periodic review, and revision of visibility long-term strategies. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated into the applicable implementation plan for various States, as provided in Subparts B through DDD of this part.

(b) *Definitions.* For the purposes of this section, all terms shall have the meaning as ascribed to them in the Clean Air Act, or in the protection of visibility program (40 CFR 51.301).

(c) *Long-Term Strategy.* (1) A long-term strategy is a 10- to 15-year plan for making reasonable progress toward the national goal specified in § 51.300(a). This strategy will cover any existing impairment certified by the Federal land manager and any integral vista which has been identified according to § 51.304.

(2) The Administrator shall review, and revise if appropriate, the long-term strategies developed for each visibility protection area. The review and revisions will be completed no less frequently than every 3 years from November 24, 1987.

(3) During the long-term strategy review process, the Administrator shall consult with the Federal land managers responsible for the appropriate mandatory Class I Federal areas, and will coordinate long-term strategy development for an area with existing plans and goals, including those provided by the Federal land managers.

(4) The Administrator shall prepare a report on any progress made toward the national visibility goal since the last long-term strategy revisions. A report will be made available to the public not less frequently than 3 years from November 24, 1987. This report must include an assessment of:

(i) The progress achieved in remedying existing impairment of visibility in any mandatory Class I Federal area;

(ii) The ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I Federal area;

(iii) Any change in visibility since the last such report, or in the case of the first report, since plan approval;

(iv) Additional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national visibility goal;

(v) The progress achieved in implementing best available retrofit technology (BART) and meeting other schedules set forth in the long-term strategy;

(vi) The impact of any exemption granted under § 51.303;

(vii) The need for BART to remedy existing visibility impairment of any integral vista identified pursuant to § 51.304.

(d) *Delegation of Authority.* The Administrator may delegate with respect to a particular visibility protection area any of his functions under this section, except the making of regulations, to any State or local air pollution control agency of any State whose boundaries encompass that area.

3. In § 52.27 paragraph (d)(2) is revised and paragraphs (d)(3), (d)(4), and (d)(5) are added to read as follows:

§ 52.27 Protection of visibility from sources in attainment areas.

* * * * *

(d) * * *

(2) The reviewing authority must consider any analysis performed by the Federal land managers, provided within 30 days of the notification required by paragraph (d)(1) of this section, that shows that such proposed new major stationary source or major modification may have:

(i) An adverse impact on visibility in any Federal Class I area, or

(ii) An adverse impact on visibility in an integral vista codified in Part 81 of this title.

(3) Where the reviewing authority finds that such an analysis does not demonstrate that the effect in paragraphs (d)(2) (i) or (ii) of this section will occur, either an explanation of its decision or notification as to where the explanation can be obtained must be included in the notice of public hearing.

(4) Where the reviewing authority finds that such an analysis does demonstrate that the effect in paragraph (d)(2)(i) of this section will occur, the permit shall not be issued.

(5) Where the reviewing authority finds that such an analysis does demonstrate that the effect in paragraph (d)(2)(ii) of this section will occur, the reviewing authority may issue a permit if the emissions from the source or modification will be consistent with reasonable progress toward the national goal. In making this decision, the reviewing authority may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

§§ 52.145, 52.344, 52.633, 52.690, 52.1183, 52.1236, 52.1488, 52.1531, 52.1606, 52.1636, 52.1831, 52.1933, 52.2132, 52.2179, 52.2234, 52.2304, 52.2452, 52.2533, 52.2632, 52.2781 [Amended]

4. Sections 52.145(AZ), 52.344(CO), 52.633(HI), 52.690(ID), 52.1183(MI), 52.1236(MN), 52.1488(NV), 52.1531(NH), 52.1606(NJ), 52.1636(NM), 52.1831(ND), 52.1933(OK), 52.2132(SC), 52.2179(SD), 52.2234(TN), 52.2304(TX), 52.2452(VA), 52.2533(WV), 52.2632(WY) and 52.2781 (VI) are amended by adding paragraph (c) to read as follows:

* * * * *

(c) *Long-term strategy.* The provisions of § 52.29 are hereby incorporated and made part of the applicable plan for the State of_____.

5. Section 52.281(CA) is amended by adding paragraph (e) to read as follows:

§ 52.281 Visibility Protection

* * * * *

(e) *Long-term strategy.* The provisions of § 52.29 are hereby incorporated and made part of the applicable plan for the State of California.

§§ 52.61, 52.183, 52.989, 52.1339, 52.1387, 52.1782, 52.3247 [Added]

6. Sections 52.61(AL), 52.183(AR), 52.989(LA), 52.1339(MO), 52.1387(MT), 52.1782(NC), 52.2347(UT) are added to read as follows:

§ 52. ___ Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable procedures for protection of visibility in mandatory Class I Federal areas.

(b) Long-term strategy. The provisions of § 52.29 are hereby incorporated into the applicable plan for the State of ———.

7. The second § 52.1031 entitled "Visibility protection" is redesignated as § 52.1033 and revised to read as follows:

§ 52.1033 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable procedures for protection of visibility in mandatory Class I Federal areas and the integral vistas identified in 40 CFR 81.437.

(b) Regulations for visibility monitoring and new source review. The provisions of §§ 52.26 and 52.27, including the provisions for protection of integral vistas, are hereby incorporated and made a part of the applicable plan for the State of Maine.

(c) Long-term strategy. The provisions of § 52.29 are hereby incorporated into the applicable plan for the State of Maine.

PART 81—[AMENDED]

Part 81, Chapter I of Title 40, Code of Federal Regulations is amended as follows:

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

Authority: Sections 101(b)(1), 110, 169(a)(2), and 301(a), Clean Air Act as amended (42 U.S.C. 7401(b), 7410, 7491(a)(2), 7601(a)).

2. Section 81.437 is revised to read as follows:

§ 81.437 New Brunswick, Canada.

TABLE 1

Area name	Acreage	Public law establishing	Federal land manager
Roosevelt Campobello International Park	2,721	88-363	(1)

[1] Not applicable.

TABLE 2.—INTEGRAL VISTAS ASSOCIATED WITH MANDATORY CLASS I AREAS

Park	Observation point	View angle	Key features	Also viewed from
Roosevelt Campobello International Park	Roosevelt Cottage and Beach Area	244°–56°	Estes Head Eastport North Lubec Cobscook Bay Shackford Head St. Andrews Friar's Head Treat's Island Passamaquoddy Bay Deer Island Indian Island Rouen Island Cherry Island Thrumcap Island Owen House Welshpool	Portions from Friar's Head.
	Friar's Head	154°–94°	Roosevelt Cottage Campobello Island Weir Friar's Bay Welshpool Wilson's Beach North Road Head Harbour Passage Casco Island Green Island Pope Island Thrumcap Island Cherry Island Rouen Island Indian Island Deer Island Passamaquoddy Bay Old Sow Whirlpool St. Andrews Eastport Friar Roads Estes Head Perry Shackford Head Pembroke Cobscook Bay Treat's Island Major's Island North Lubec Passamaquoddy Dam portion of Roger's Island Dudley Island Johnson's Bay Pope's Folly Cutler Naval Radio Station Lubec Mulholland Point Lighthouse FDR Memorial Bridge South Lubec Grand Manan Island	Portions Viewed From Roosevelt Cottage and Beach Area.

TABLE 2.—INTEGRAL VISTAS ASSOCIATED WITH MANDATORY CLASS I AREAS—Continued

Park	Observation point	View angle	Key features	Also viewed from
	Con Robinson's Point	308°–150°	Herring Cove Beach Provincial Park Eastern Head Herring Cove Mainland New Brunswick Point La Preau Wolf Islands Atlantic Ocean	Portions Viewed From Liberty Point.
	Liberty Point	34°–236°	Ragged Point Mainland New Brunswick Atlantic Ocean Wolf Islands South Lubec Grand Manan Island Sail Rock West Quoddy Head Lighthouse South Lubec	Portions Viewed From Con Robinson's Point.

[FR Doc. 87–26556 Filed 11–23–87; 8:45 am]
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To designate the period commencing November 22, 1987, and ending November 28, 1987, as "American Indian Week." (Nov. 19, 1987; 101 Stat. 915; 1 page) Price: $1.00

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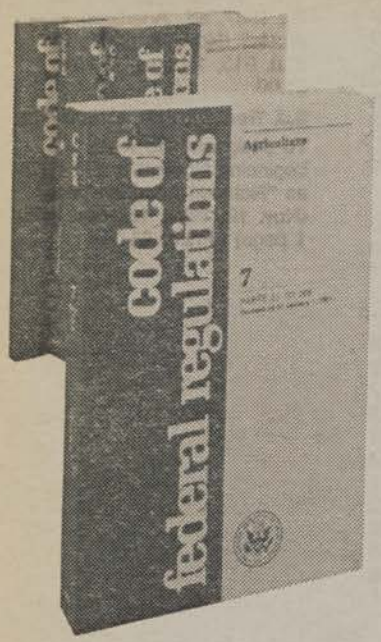

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